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ABSTRACT

The relationship of tax law and the politicization of the university is discussed in an effort to make university personnel aware of possible legal penalties involved in political action. The effect of political activities on university tax exemption is reviewed in relation to the policy section of Section 510 (3) of the Internal Revenue Code, university action, prohibition against attempting to influence legislation, or intervention in a political campaign. Criminal code provisions are indicated. Appendices of related material are included. (MJM)

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SPECIAL
ANALYSIS

POLITICAL ACTIVITIES OF COLLEGES AND UNIVERSITIES

Some Policy and Legal Implications

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PERSPECTIVE

American universities are alive with political activity. Though this activity will reach its peak in the November congressional elections, the phenomenon is not new. Within the past few years this country, along with many others, has experienced an unprecedented upsurge of political activism on its campuses. A major aspect of this development is the increasing demand that universities and colleges commit themselves to political action in a variety of ways and in a variety of causes. If such demands are acceded to, universities may make themselves liable to serious legal penalties.

The Statutes

Section 501 (c) (3) of the Internal Revenue Code provides that an exempt organization, including an educational institution, shall lose its exemption from federal income taxes if any "substantial part" of its activities constitute "carrying on propaganda, or otherwise attempting, to influence legislation," or if it should "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."[1] A parallel provision, Section 170 (c), denies a deduction from income taxes for donors to institutions that violate these proscriptions.[2] Moreover, Section 610 of the Criminal Code makes it a criminal offense "for any corporation whatever. . .to make a contribution or expenditure in connection with any (federal) election..."[3] Sanctions may be visited upon both the corporation and its responsible officers. Enforcement authorities consider Section 610 violated by indirect contributions, as, for example, the payment by a corporation of an employee's salary during a period which he devotes to work on behalf of a candidate for federal office.[4]

Purposes of the Study

Our primary purpose is to analyze the law—to assist the public in understanding it and university personnel in complying with it. In some important respects, the law seems fairly clear, but in other areas the law is still developing and our guidance takes the form of pointing out possible dangers. Uncertainty about the future shape of the law is increased by the pressure upon the statutes' basic concepts of major policy issues that have yet to be resolved. We have tried to articulate these issues that must be faced in applying the laws under examination here as well as in the framing of any future legislation dealing with these topics.

Our interest in the subject, however, goes far beyond providing guidelines. These laws possess a larger significance because of their bearing upon the phenomenon of the politicization of the universities. Few people would be interested in the narrow subject of the tax law relating to educational institutions, but when that tax law deals with an aspect of a dramatic and troublesome social trend it may legitimately claim the attention of a wider audience. We cannot hope in a study of this length, of course, to explore the full range of social and political implications of this topic, but we hope to stimulate thought about academic politicization, the dangers it presents, and the law's proper relation to the problem. It is important, indeed it seems to us crucial, that assumptions about fundamentals—the role of universities in our society and the function of legal norms and sanctions in defining that role—be made explicit and examined in the process of applying the existing statutes and in shaping new laws. Much that is ambiguous in the statutes under discussion here arises from the lack of such fundamental discussion at the time of their passage.

Nature of the Problem

These are sensitive and potentially inflammatory topics. Some persons will perceive the application of law to university political behavior as an attempt to stifle dissent, an assault upon academic freedom. Others will see it as an essential means of recalling universities to their proper educational focus. The opportunities for heated rhetoric and hasty reaction on each side will be many. There is no need here to anticipate or to take sides on all of the issues that may arise. The problem is too complex for that and our society is merely beginning to explore its manifold difficulties. But we do speak from a general position that should be made clear. Universities have been centers for free and disinterested inquiry, the systematic accumulation of knowledge, and the transmission of both that knowledge and that spirit of inquiry to rising generations. We begin from the premise, widely but by no means universally shared, that these traditional and specialized functions are extremely valuable and worth preserving. But universities may be damaged, perhaps irreparably, either by the unsophisticated application of legal controls or by the continued growth of an uninhibited political activism on campuses. Alarm at developments within our universities must not trigger unreflective responses, but there is equally no occasion for a complete hands off policy. Law can play an important part in preserving academic values but those values certainly cannot be sustained entirely by law.

The relationship of the present study to the general problem may be clarified by some perspective. Politicization is a diffuse and complex phenomenon. It poses problems for and about universities that could hardly have been foreseen even a few years ago and were certainly not anticipated when Section 501 (c) (3) of the Internal Revenue Code and Section 610 of the Criminal Code were enacted many years ago. These statutes are aimed at actions attributable to the policy of an institution, and such actions are by no means at the root of our current troubles.

Effects of Politicization

The general public has been made aware of politicization in the universities by the spectacular outbreaks of violence that have accompanied the process. These are familiar items of television and press coverage: bombings, arson, building seizures, record destruction, imprisonment of administrators in their offices, classroom disruptions, equipment destruction, and violent encounters between students and police or national guardsmen. Scores of universities have known such episodes, some repeatedly, and a few campuses approach a state of incessant guerilla warfare. Lesser incidents of the same nature plus such behavior as window smashing, abusive and obscene language, threats of violence, disruptive picketing, and the like, have become so commonplace that they frequently go unreported.

Yet this bare catalogue of physical violence, horrifying though it may be, does not begin to suggest the depth and intensity of university politicization or the more profound changes that are occurring—changes in mood and atmosphere that may prove even more ominous in the long run. Prolonged physical threat must inevitably change for the worse the performance of institutions not geared to violence, whose structure, rules, and habits indeed assume that force is not merely improper but unthinkable. Physical threat alone might not have produced the decline of morale, the loss of elan, the attrition of the spirit, that is so patently occurring within many universities. This is more probably the result of moral pressure and uncertainty, for the crisis in the universities is precipitated not by the traditional enemies of free inquiry but by members of the academic community itself. Students and faculty members are not merely using the university as a convenient

forum to protest national policies or to launch ventures into the politics of the larger community but are actively, and even violently, challenging the legitimacy of traditional academic functions and standards. Sharp challenges from within the community, stated in uncompromising moral and intellectual terms, are bound to be more unsettling and divisive than would challenges from without. Accustomed to misunderstanding and even to hostility from without, the academic community believed that its values were universally held within. The discovery that they are not has shocked and dismayed the academic world.

In a politicized university, moreover, challenge and its attendant turmoil are unceasing and therefore enervating. Again the community outside the universities is aware of issues that result in dramatic violence or that involve many universities at once, such as the protests and strikes that swept hundreds of campuses in response to the United States's Cambodian invasion. But, increasingly, many other once routine actions and procedures have come to be regarded as political and hence the proper subjects for demands, boycotts, strikes, and the application of other forms of pressure. Among the topics now so regarded on many campuses are changes in the content of curriculum, faculty recruitment, the grant or denial of tenure to faculty, admissions policy, disciplinary actions, performance of government research, racial composition of the faculty or student body, erection of new buildings, wage scales of maintenance workers, performance of service functions for the local community, and student participation in various aspects of university governance.

This state of affairs imposes heavy costs upon universities. Intellectual work demands, for most people, a degree of serenity and freedom from distraction and tension. It is most fruitful when the academic discussion is civil and open. These conditions are destroyed when the university lives in chronic tension, anger, and distrust. Politicization means division among faculty members, between faculty and administration, between faculty and students, and among students. Not only is communication impaired among faculty members, and hence an important stimulus to intellectual achievement lost, but teaching, which requires a degree of sympathy and shared values between the teacher and the students, becomes less effective.

The Academic Consensus on National Issues

Finally, though we have stressed divisions and tensions within the universities, politicization has, curiously, produced an opposite danger, that of conformity. Within universities there may be strife about internal policies but, increasingly, universities face the outside world and its political issues with a unified outlook. Within many universities there is, for example, remarkably little debate on such subjects as Vietnam, and on many such campuses no speaker wishing to defend present national policy on that subject can even obtain a hearing. Less dramatic but still notable is the academic consensus about other national issues. Academicians do not display the spectrum of opinion that the larger society displays. There are very few representatives of conservative or even middle-of-the-road political opinion, a situation that is surely a matter for concern in departments—such as economics, political science, sociology, and law—that treat controversial issues as subjects for scholarship.

Despite this relative uniformity of opinion, university administators and faculties have generally resisted the suggestion that they participate as institutions in political affairs. Most academicians share the general American feeling that universities have no place in politics. Yet when pressure became intense enough

many universities came dangerously close to violating that principle. Pressure for university political action is particularly difficult to resist when opinion about the issue at stake is virtually unanimous on the campus. Intensity and unanimity of opinion combined last May when United States military actions began in Cambodia and the result was a number of forms of university political involvement that at least raised the legal issues of tax exemption discussed here.

University Involvement

The clearest case of university involvement, of course, would be action in the university's name by its governing officers, usually a board of trustees and the president. We know of no such case but there were at some schools formal resolutions by faculties purporting to speak as faculty bodies rather than as individuals. There were also numerous instances of use by political groups, often composed of faculty or students but sometimes composed of persons not connected with the university, of institutional facilities and resources. After the Cambodian intervention political groups were frequently given access to university computers, research facilities, office space, auditoriums and classrooms, residential facilities, dining halls, telephone service, secretarial service, mailing permits, radio stations, mailing lists, and so forth. Computers were in use by students at several universities to analyze the voting records of congressmen. Mailing lists were used to send leaflets opposing congressmen up for reelection to alumni. University buildings were used as centers for the coordination of national student strikes over Cambodia, for the coordination of movements to elect candidates opposed to national policy in Vietnam, and for similar purposes.

A number of universities agreed to close for one or two weeks just before the November elections in order to give students and faculty more time to participate in the various congressional election campaigns. Last May great numbers of students and some faculty members viewed it as appropriate to shut down their universities in order to express their opposition to the Cambodian operation. Many demanded that their universities show sympathy with the protesters by suspending classes, waiving examination and paper requirements, and, in general, "altering normal academic expectations." Some universities complied with one or more of these demands, though whether administrators and faculties who acceded did so out of sympathy and a belief that they should so respond or out of prudence in an explosive situation is not clear and undoubtedly varied from case to case. One can certainly sympathize with beleaguered academics torn between the desire to keep their universities out of politics and to preserve them from crippling internal conflict. Yet the fact remains that many universities did edge closer to formal political involvement.

We cite these instances not to suggest that any particular university violated any federal law—we have too little information about particular cases to form a confident judgment and we certainly have no interest in broadcasting any such opinion. We cite these cases rather as examples of the politicization that grew up in our universities and to show that some aspects of that trend may bring universities within the ambit of the laws discussed in this monograph.

But another point must be stressed. We have rehearsed the many manifestations of politicization on American campuses to show that only some aspects of that phenomenon can be dealt with by present federal statutes. Speaking generally, the mood of politicization within the universities is probably beyond the reach of any law, and the political acts of individual students, faculty, and administrators in American political processes generally are not only beyond inhibition

by statute but must, of course, remain so.

If the degree and nature of the politicization we have described is a serious social problem, and we think it is, only part of the social response can be legal in nature. Just as the core of the problem is one of mood and belief, so the solution will surely be primarily one of mood, belief, and the persuasive assertion of the traditional values of the academy. Law alone cannot sustain or enforce values that are not widely and deeply held.

Broader Investigation Needed

Though this specialized study is not the occasion for it, there is, therefore, a need for broader investigation into the phenomenon of politicization and possible techniques of controlling it. It would be very useful, if it is possible, to locate the causes or the roots of student and faculty unrest, the widespread disenchantment with long-accepted academic values, and the willingness to employ violence. If we had a better understanding of causes, we might be able to devise more effective responses. But it may well prove impossible to find ultimate causes. Not only is the phenomenon extraordinarily complex and perhaps fed from more than one root, but most attempts to specify causes so far have not been notably successful and many have been strikingly superficial. A serious investigation of causes would have to take account of the fact that politicization and violence are not confined either to the United States or to universities. Severe student disorders and university disruptions have occurred, among other places, in France, West Germany, Italy, Sweden, England, Japan, and India. The spread of the problems suggests that the problems and social tensions of the United States are not ultimately the cause of the phenomenon as so many have maintained. And it should be recalled that politicization, often accompanied by violence and the rhetoric of violence, is by no means confined to the universities, though it appears to be most acute there. These facts at least raise the question of whether we are not observing a deep, though hitherto unsuspected, crisis in western culture rather than a crisis defined by American universities. If this should turn out to be the case, the search for causes will be far more difficult and conclusions far less precise than one might at first hope. Still, the crisis, though general, does appear to be most acute or advanced in universities and that may suggest something, if not about causes then at least about predisposing factors.

Moving to this level of investigation, it might be possible and worthwhile to ask why universities as institutions have proved so vulnerable. Are there attitudes, more common in the academy than elsewhere, that lessen resistance to attacks from the particular quarters from which the most recent attacks have come? Is the vulnerability in part due to the development of values, practices, and structures adapted to resist attacks from the outside community, which universities have faced for centuries, but offering aid rather than hindrance to attackers within? Has there occurred a shift of governing power from university presidents to faculties so that effective management in crises becomes impossible for structural reasons, large committees being unable to make executive decisions? Are there structural or procedural changes that universities can adopt to render themselves less vulnerable to inside attack?

Long-Run Effects

Beyond these issues, what are likely to be the long-run effects of continued academic politicization both upon the universities and the general society? How far is politicization likely to go and what forms will it take? How seriously is it

likely to damage the spirit of free inquiry, particularly in the social sciences? What forms will public reaction take? Will financial support at present levels be available for politically oriented universities? If not, how will increasing demands for education beyond the high school level be satisfied? Must new institutions be devised to carry on indispensable intellectual and research work that can no longer be carried on effectively on university campuses? What effect would such an increased separation of scholarship and teaching have upon the teaching performance of universities, upon students, and ultimately upon the competence and intellectual orientation of our society?

The Role of Law

Society need not, of course, await definitive answers to questions of this nature before responding to the problem of academic politicization. If a majority of Americans believe that politicization imperils the universities' most valuable functions, measures will undoubtedly be taken to counter that development. Rarely, if ever, do we wait to find the ultimate cause of social disorder before attempting to deal with it. No society has ever found "the" cause of crime or poverty, but every society has, with varying degrees of effectiveness, attempted to curb the one and alleviate the other. We deal, as we usually must, with symptoms rather than causes. The obvious analogy is to medicine which effects many of its cures by controlling symptoms that could kill until the body cures itself. Similarly, as has often been remarked, we do not so much solve our great social problems as get over them. Law, our oldest and most successful technique of social control, typically deals with individual and institutional aberrations by defining and inhibiting their unwanted symptoms through the application of civil and criminal sanctions. But law does more than inhibit through penalties. The legal definition of improper behavior is itself a moral force that clarifies and reinforces a society's expectations and values, helping to control conduct through moral consensus.

Of more immediate and practical importance than a search for the causes of university politicization, then, is an investigation of the manifestations and likely effects of the phenomenon, and the means, including the application of law, by which it can be controlled. Certain of these manifestations pose little more than practical difficulty. The use of violence can be punished directly by the criminal law without endangering other social values. The problems are primarily those of identification and fairness with which the criminal process has long had to cope. But other aspects of politicization, some of which have been mentioned here, are more subtle and difficult to reach without impairing freedoms worth preserving. In this area a study would have to face squarely issues that we cannot explore fully in the present, necessarily limited, study: the bearing of the First Amendment to the Constitution and that complex of values we sum up rather vaguely in the term "academic freedom." These are values that must not be overlooked either in the application of existing law or the devising of new laws, but they present questions so large and complex that they require separate treatment.

To raise these larger problems and to stress the relatively limited impact of present law upon them is not to deny that law any virtue. On the contrary, it has important contributions to make. Section 501 (c) (3) of the Internal Revenue Code, for example, may be unable to reach much that is of concern but it can at least prevent the formal involvement of universities in politics, and that is an accomplishment of both practical and symbolic value. It sets some limit to a process that now appears threatening, and it may, by restating a basic value—the

necessity of a firm line between education and indoctrination, between scholarship and propaganda—affect thought and action in areas to which its sanctions cannot and ought not be directly applied. That is at least a beginning.

NOTES

1. 26 U.S.C. §501 (c) (3). For a complete text of this section see Appendix A; a more complete discussion of this section begins at p. 8.

2. 26 U.S.C. § 170 (c). For a complete text of this section see Appendix A.

3. 18 U.S.C.§610. For a complete text of this section see Appendix A; a more complete discussion of this section begins at p. 26.

4. See Indictment, July 31, 1970, against First Western State Bank, Minot, North Dakota, quoted in part *infra* and noted at p. 60 in Appendix F. See also Department of Justice Memorandum, January 26, 1962 (on file in New York University Law Review Library).

EFFECT OF POLITICAL ACTIVITIES ON THE UNIVERSITY'S TAX EXEMPTION

Section 501 (c) (3) of the Internal Revenue Code ("Code") exempts from income tax private[1] colleges and universities "organized and operated exclusively for...educational purposes...." In addition, the Code permits individuals and corporations to deduct contributions made to such educational institutions. An educational institution qualifies for tax exemption and as a recipient of deductible contributions provided (1) that "no substantial part of the activities [of the institution] is carrying on propaganda, or otherwise attempting, to influence legislation" and (2) that the institution "does not participate in, or intervene in (including the publishing and distributing of statements), any political campaign on behalf of any candidate for public office".

Most private educational institutions have applied for and received a ruling from the Internal Revenue Service that they are tax exempt and that contributions to them are deductible. In addition, the Internal Revenue Service publishes a current list[2] of organizations, contributions to which are deductible. This listing amounts to an "advance assurance of deductibility," so that as long as an organization remains on the list, donors may, as a practical matter, count on their contributions being deductible.[3]

While donations to an organization remain deductible until notice to the contrary, any organization's tax exemption may be revoked retroactively. Thus, if the Internal Revenue Service determines that an educational institution became disqualified in a prior year, it could assert tax liability against the organization for all prior years for which the statute of limitations has not run. However, the deductibility of contributions made to the institution prior to notice of the challenge would not be affected. This can result in a seemingly anomalous situation where deductions are allowed for contributions to a non-exempt organization (as determined by retroactive revocation). Accordingly, the Internal Revenue Service has sometimes given public notice that it is withdrawing advance assurance of deductibility of contributions pending the completion of an investigation into the organization's tax-exempt status. Indeed, where the disqualifying event has high visibility (e.g., clear involvement in a political campaign) the Internal Revenue Service might even decide to withdraw advance assurance of deductibility before embarking on its investigation.

However, since the revocation of an exemption and the concomitant denial of deduction depend upon affirmative administrative action, a university or its donors will be adversely affected from a tax standpoint by political activities only if the Internal Revenue Service takes some action. Because the sanction of a revocation of an exemption is extremely severe both to the university and its donors, the Internal Revenue Service may be quite reluctant to act except in cases where the political activities of the institution are so pervasive that the institution may be clearly said to have abandoned its traditional and exclusive educational role. The administrative dilemma posed by the sanction of revocation is well recognized—there is no middle ground—and as the House Ways and Means Committee noted:

> the absolute prohibition upon involvement in political campaigns on behalf of any candidate for public office frequently results in the alternatives of unreasonably severe punishment or unreasonably light punishment.[4]

It is indeed paradoxical that the severity of the sanction of revocation probably rules out its application in isolated, but nevertheless significant instances of the very politicization of campuses (e.g., one-shot involvement in a national political campaign) that the statute intended to prohibit.

This is not to say that if a university engages in proscribed activity, it and its donors may indefinitely enjoy prohibited tax benefits by virtue of administrative indifference. The law may well be developing in such a way as to permit a private citizen to compel the Internal Revenue Service to act in the face of a clear violation of the statute if the Internal Revenue Service refuses to take the initiative itself. For example, in a recent case, *Green* v. *Kennedy*, 309 F. Supp. 1127 (D.C., D.C., 1970),[5] the Secretary of the Treasury, the Commissioner of Internal Revenue, and their entire staffs were ordered to stop issuing exemption rulings for, and approving deductions to, private schools in Mississippi without first affirmatively determining, pursuant to court-approved procedures, that the schools were not operated on a segregated basis. The plaintiffs in effect complained that through administrative indifference, the IRS was allowing tax benefits to thinly disguised "private" schools formed for the sole purpose of avoiding integrated public schools.

While a constitutional interest was present in *Green*, and may or may not be present in a case seeking to compel the Internal Revenue Service to enforce the law against a college engaging in political activity, in violation of the statute, a plaintiff might nevertheless be able to demonstrate a significant public interest relating to the dangers of the politicization on campuses above and beyond tax policy. In addition, it should be noted that in such a case the Internal Revenue Service could not maintain, as it did in *Green*, that the tax law is neutral on the subject. Rather, the Internal Revenue Service could only argue that in its administrative discretion it may properly choose not to enforce a clear congressional mandate, for whatever reason.

The Policy Rationale of Section 501 (c) (3)

The application of Section 501 (c) (3) to universities will be influenced by the view that courts and the Internal Revenue Service take of the enactment's policy rationale, the goals that Congress intended it to implement. Our predictions of what the law permits and what it forbids must, therefore, take account of what policy is likely to be attributed to the statute.

The tax exemption is provided for entities "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals." The fact that a tax exemption is conferred indicates of course that the listed types of organizations are regarded as performing socially favored or preferred functions. Questions of whether such functions should be preferred and whether preference is appropriately expressed through a tax exemption are important but well beyond our subject. We are attempting, for purposes of prediction, to discern and describe a policy, not to evaluate it.

Two major rationales may be perceived as underlying Section 501 (c) (3). The first may be termed a "tax equity rationale" and the second a "social policy rationale." The former would assign a more limited role and impact to the statute than the latter. We think it more likely that both policies underlie the statute and that its impact will therefore be wider. In any case, the statute is completely open

to such an interpretation and we must take account in our predictions of the possibility that this reading will be applied.

The tax equity rationale, which is clearly present in the statute, rests upon the premise that Congress, wishing to subsidize a group of preferred activities, imposed conditions because of the inequity of permitting campaign contributions to be disguised as charitable or educational contributions. Under present tax law, the creation of an exempt organization is relatively easy, and the country has tens of thousands of them. If the ruse of channeling political contributions through such organizations were permitted, the old and well-established rule against the deductibility of those contributions would be easily circumvented.[6] The cure provided by the law is quite potent: if a single dollar of the organization's funds are spent in a campaign, the exemption is lost and the organization is no longer eligible for the tax deductible donations.[7] We do not mean to suggest that an equity rationale might not serve other policies. It is certainly conceivable, for example, that Congress thought the form of tax avoidance blocked by Section 501 (c) (3) was particularly subject to abuse by the very wealthy and that the provision had the added merit of curbing unequal political power by preventing wealth from magnifying its political power by funneling contributions through exempt organizations. But the point is that a statute applied solely on a tax equity rationale would concern itself only with the expenditure of funds (or the use of facilities) on political matters. It would not, in all probability, reach the case in which a university endorsed or opposed a candidate for public office if no university moneys or facilities were involved.

Yet there seems to be something more to the statute's policy than this tax equity rationale suggests. There appears to be an element of social control, a desire to ensure that the performance of organizations engaged in certain socially preferred activities not be diluted or made ineffective by the addition of other, perhaps inconsistent, activities. Tax laws, after all, are not necessarily concerned with raising revenue and preventing evasion. They frequently have wide-ranging social goals, often to the exclusion of any revenue purpose. Examples abound. The federal tax on products made with child labor was not designed to raise a dollar of revenue but to price child labor out of the market because of the belief that such labor was a social evil. A more modern example is the provision for quick depreciation write offs of rehabilitated low income housing.

Section 501 (c) (3)'s provision for the complete loss of tax exemption upon proof of participation in specified political activities may, similarly, express a congressional desire to define the proper social role of preferred organizations, to erect a wall between such organizations and politics analogous to the wall erected between Church and State by the First Amendment. Such a rationale would suggest that the statute applies, for example, to the campaign endorsement situation where no funds are expended. Acceptance of a social policy rationale, moreover, might make courts more willing to apply the statute in cases where the expenditure of funds might, on a tax equity rationale, appear insignificant.

We think it quite plausible that the social policy as well as the tax equity rationale underlies Section 501 (c) (3). Congress may reasonably have wished to erect a wall between preferred organizations and the political process for the benefit and well-being of both. We will cast the argument in terms of universities but it applies to all preferred organizations.

Universities are certain to be injured, and probably severely, by entry into politics. By becoming explicitly political an educational and scholarly institution will inflict internal injuries upon itself. This is one danger of academic politicization already mentioned: the passions generated by partisan conflict must inevitably erode the objectivity essential to education and scholarship. But injury is also likely to be inflicted from without. Universities that venture into politics will make political enemies. Those whose interests and positions are threatened will certainly retaliate, and one may confidently predict that a variety of reprisals and sanctions will sooner or later be visited upon a politically-active university. Depending as it does upon a continuing flow of funds from private individuals, businesses, and, increasingly, the federal government, as well as upon state and local property tax exemptions, the university is uniquely vulnerable to counterattack should it insist upon a political role. Congress might reasonably have wished to protect universities from this sort of injury by a prophylactic rule, expressed in a conditional tax exemption, that attempts to inhibit universities from supplying the provocation for political reprisal.

Looking at the other side, Congress may also have wanted to protect American political processes from university intervention. Here again, there is an analogy to the reasons for the separation of Church and State. Americans have always resisted the entry of churches into politics, precisely because churches are institutions of enormous prestige and influence. Similarly, the American veneration for education, evidenced in an unparalleled proliferation of institutions of higher education and a relatively enormous, and increasing, percentage of youths going beyond high school, has resulted in a very high level of prestige and influence for universities and their faculties. To be sure, that prestige and influence would suffer if universities took political stances, but they would probably have an impact. Congress may well have considered the advantage of universities in politics, resting as it would upon a reputation for learning and objectivity, to be as unfair as the political influence of churches, resting upon the religious sentiments of Americans.

These are some of the ideas that seem to cluster naturally about a statute that inhibits university political action. Perhaps they were relatively inchoate when Section 501 (c) (3) and its predecessor statutes were enacted, or perhaps they seemed so obvious that they were not debated. There was certainly in 1954 no significant sentiment in favor of universities entering politics. Be that as it may, these policy ideas are familiar and congenial to most Americans; Section 501 (c) (3) is easily read as embodying them, and they seem likely to affect the statute's interpretation and future development.

An examination of the law and such indications of congressional intent as are available increases the plausibility of the thesis that Section 501 (c) (3) embodies a social policy rationale as well as a tax equity rationale. The language of Section 501 (c) (3) is drawn more broadly than a tax equity rationale standing alone would require. A tax equity rationale, attempting to inhibit the diversion of funds from approved purposes to non-exempt purposes, would lead to the employment of accounting or transactional tests. Congress is capable of articulating, and has, in fact, often articulated such tests in the Internal Revenue Code. This statute, however, prohibits not diversion of funds but specified types of activities, whether or not they involve the expenditure of money. Thus, it forbids participation or intervention in a political campaign, both of which can be accomplished without the expenditure of the university's funds. It would appear, therefore, to be no defense that a university had intervened in a campaign, lending only its name and

prestige to a candidate, while the necessary funds had been supplied by the candidate and other supporters rather than the university.

This reading of the policy of Section 501 (c) (3) is clearly supported by the Treasury Regulations which state that participation or intervention in a political campaign includes "the making of oral statements," without requiring the expenditure of any funds.[8] The interpretation is further supported by the American Council of Education's guidelines issued on June 19, 1970, and the Internal Revenue Service's acknowledgement of the fairness and reasonableness of those guidelines. While the guidelines dwell for the most part on such matters as the provision by universities of free services or space to political groups, they also caution that "Extraordinary or prolonged use of facilities, particularly by nonmembers of the university community, *even with reimbursement*, might raise questions," (emphasis added) and that "no member of the academic community should speak or act in the name of the institution in a political campaign." Moreover, the Council's guidelines flatly state: "In order to assure compliance with the requirements of Section 501 (c) (3), universities in their corporate capacities should not intervene or participate in any campaign by endorsing or opposing a candidate or taking a position on an issue involved in the campaign for the purpose of assisting or opposing a candidate."[9]

We may, therefore, properly approach questions arising in connection with Section 501 (c) (3) on the assumption that it was intended to erect a wall between universities and partisan politics and not merely prevent the diversion of tax exempt funds. In that light the statute is both a more important policy and likely to be a stricter one in application.

What Actions Are The University's?

One of the most important limitations upon the reach of both the Internal Revenue Code and the Criminal Code is the requirement that the activity that triggers the application of sanctions clearly be the behavior of the university, not that of its individual members. Yet there is a policy dilemma here, one familiar to the law of corporations, labor unions, and other associations. Application of sanctions to an organization because of the activities of its individual members may, by inhibiting the member's individual behavior, cut far too deeply into individual freedom. Yet failure to attribute the individual's actions to the organization may allow the policy of the law to be defeated by an insubstantial change of form. Because of their looseness of organization and lack of structure, universities may raise this dilemma in a particularly acute way. The limited reach of Section 501 (c) (3) and Section 610 should assuage fears that these statutes can be used to stifle dissent, and it certainly avoids at least one range of problems grounded in the First Amendment to the Constitution, which prohibits congressional abridgement of free speech. On the other hand, the limitation probably means that the law does not reach many, probably most, of the manifestations of academic politicization.

What Time "Belongs" To The University?

In deciding whether to attribute political activity (whether by students, faculty, or administrators) to the university it is important to bear in mind certain fundamental ways in which universities differ from other types of institutions. These differences require that rules perhaps appropriate in other contexts not be mechanically applied without recognition of the values at stake. Universities, for example, differ markedly from business corporations in that they have no clear tradition or

understanding of what time belongs to the university. Neither faculty nor students are expected to work on a 9-to-5, five-day-a-week schedule. Faculty are, of course, expected to meet their classes, but, at many institutions, students need only pass their examinations, class attendance being optional. Both faculty and students are left free to accomplish their academic work at times and places of their own choosing. This pattern of freedom is firmly established at most, perhaps almost all, major universities. It obviously poses almost insuperable difficulties to any attempt to state that the political activities of faculty members or students are attributable to the university because carried on during time that "belongs" to the university. This means, of course, that members of the university community have a great deal of time which they can, if they choose, devote to internal as well as external politics. The freedom inherent in the university's loose structure is susceptible to abuse, but that danger is not new. What is new is the form of the abuse.

Freedom of Personnel

It is not clear that there is any satisfactory solution to this aspect of the problem. An attempt to fix by law or by university policy the time and effort that faculty and students owe to the university would be fraught with serious difficulties. The freedom and absence of structure that a university affords is not accidental; it is thought, probably correctly, to be conducive to scholarly effort. It arises from the recognition that for many people intellectual work is not best done according to a rigid schedule. Indeed, it may often be impossible to state what constitutes intellectual work. Random reading, reverie, chance meetings, informal conversation, work for non-academic institutions, all of these may and frequently do contribute to the stimulation and development of ideas. Schooling in the mechanical sense is best done by schedule. It is highly doubtful that education, in its broadest and most profound sense, can be. The informality of this "method" entails, of course, not merely the certainty of some abuse but of waste. Those who do not achieve some degree of self-discipline will not be productive faculty members or, as students, will waste the valuable years of freedom the university affords. But that has generally been thought a price worth paying in order to permit others to develop and achieve to a degree they could not in a regimented atmosphere.

There is, in addition, the related point that control of his time is one of the major items of compensation for the faculty member. If that highly prized freedom were drastically circumscribed, whether by law or by university regulation, the real income of faculty would decline and universities would have either to find money to pay considerably larger salaries or lose many of their most valued teachers and scholars to alternative forms of employment. This, however, is a factor that cuts both ways. The politicization of the universities with its concomitant turmoil and embroilment of faculty in administrative issues also cuts heavily into the faculty member's time and energy, depriving him of much that he finds attractive about university life. Already there appears to be some shifting of faculty from more to less turbulent institutions and from universities to research institutes.

Freedom of Students

Finally, it is desirable that the law be interpreted so that universities and their donors be penalized only for actions that the responsible officials of the universities can control without infringing vital areas of academic freedom. It would be quite unfair, for example, to deprive a university of its tax exemption because of lobbying done by students who used the university's name in their effort even though the university had not encouraged or condoned the activity. Such a reading of the law would be more than unfair, however; it would be unwise from the standpoint of

those who wish to limit university political action. Some of the more radical students on American campuses have avowed their intention of destroying universities, and a law that attributed their behavior to the university would give them a potent weapon for that purpose. The law would encourage political activism by students who wished to destroy the university's tax exemption. On the other hand, a law that imposes sanctions on actions taken by the responsible university officials strengthens their hands in refusing to take political actions demanded of them by some students and some faculty.

Actions of the University Community

The looseness of university governance structures and the diffusion of decision making and effective power through the university community make it difficult to state firm rules for deciding when it is the university that acts. Nevertheless, some criteria may be derived by considering three major groups within the university that have substantially different degrees of control. The group that may most clearly commit the university consists of the board of trustees, the president, and the senior administrative officers. Next on the spectrum is the faculty, and the group with the least power to commit the university as such is the student body.

The extremes of the spectrum present little problem. When the board of trustees or the president commits a university to the contribution of funds for lobbying or for a candidate's campaign there can be no doubt that the university has acted. The same conclusion would, of course, follow if the president endorsed a candidate in the university's name, or if he directed that facilities be made available to a candidate or to a particular political organization, unless the university can prove that the act was wholly outside the president's authority and the act is immediately rescinded. We stress that the fact the university has acted in these situations does not conclude the legal issue, for it must still be determined, among other things, whether the activity is a forbidden one. Similarly, university action would seem to be present if other administrative officers, including the deans of departments or professional schools, made contributions of department or school funds or made available facilities to political groups. This conclusion is buttressed by the consideration that such subsidiary administrative officers are subject to the control of the central administration in these respects and are sufficiently high in the administrative hierarchy to make it equitable to charge the university with their acts. It would not seem fair to charge the university with an act counter to university policy by a clerk with only ministerial functions, unless the university somehow endorsed the act or condoned its repetition.

The student body, on the other hand, is not subject to university control in the same way, nor should it be. If students wish to donate their own efforts, time, and money to political causes, that is certainly not the act of the university. Students may, of course, purport to speak in the name of the university, but it would seem impossible, realistically, for the university to prevent that. Student activity may, of course, become university activity if the university adopts, endorses, or encourages it. To be perfectly safe under the tax law, the university should probably make it clear that students commit or speak for the institution.

Faculty Actions

The question of whether faculty activities can be attributed to the university is more difficult. There is no doubt that many faculties have acquired, as a practical matter, if not as a matter of formal power, the ability to commit universities

to courses of action relating to educational policy, discipline, and the like. There is also no doubt that a faculty which purports to speak or to act as the faculty of a particular institution is viewed by many persons in the general public as committing the university's prestige and influence, if not as being synonymous with the institution. For these reasons, there is force to the argument that, for example, a formal faculty resolution endorsing a candidate or supporting proposed legislation should be taken as the act of the university. Since it is reasonable to assume a faculty would not commit its university in an attempt to deprive the university of its tax exemption, a rule that formal faculty political action was university action would thus contribute to one of the major policy objectives of Section 501 (c) (3) by tending to keep universities out of partisan politics. On the other hand, the rule has its difficulties. While it is clear that individual faculty members or groups of faculty members who engage in political activity are not acting on behalf of the university, what of formal actions by faculties of particular departments or professional schools within the university? If, for instance, a law school faculty endorses a candidate or adopts a resolution concerning legislation, can that action be attributed to the entire university? The answer to that question is, under existing law, not at all clear but such faculty actions would seem to fall within the danger area. Possibly the application of the law would vary with the response of the university, the threat to tax exemption being greatest where the university appears to endorse the faculty's right to speak on such matters as a university faculty, and least where the university makes it clear that the action is not that of the institution.

It should be stressed that a rule of law inhibiting faculties from taking political positions would in no way imperil academic freedom. That value would be endangered by a contrary rule permitting faculties by majority vote to purport to bind and to represent the opinions and consciences of their dissenting colleagues.

The Prohibition Against Attempting To Influence Legislation

The first of Section 501 (c) (3)'s two prohibitions of political activity—an exempt organization is one "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation"—raises two additional major issues: (1) What constitutes an attempt to influence legislation? and (2) How does the law measure a "substantial part" of the university's activities?

What Constitutes An Attempt to Influence Legislation?

Section 501 (c) (3) defines the nature of the prohibited activities discussed in this section only as "carrying on propaganda, or otherwise attempting, to influence legislation." The apparent simplicity of this specification conceals difficult problems.

Certainly the statute would be violated[10] by direct lobbying of legislators in an attempt to influence their votes on pending or imminent bills not directly related to the operation of the university. There are, however, two other types of activities that are classifiable as attempts to influence legislation. The first of these is university issuance of statements to the general public about legislation or about issues central to pending or imminent legislation. The second is university involvement with groups that are attempting to influence legislation.

That addressing the general public may constitute an attempt to influence legislation is clear, but the Internal Revenue Service's interpretation of the statute may be overly limited and technical in one respect. The regulations define an organization that engages in a substantial amount of a prohibited activity as an "action organization" and continue:

> An organization will be regarded as attempting to influence legislation if the organization—
>
> (a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
>
> (b) Advocates the adoption or rejection of legislation.
>
> The term "legislation" . . . includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.[11]

So interpreted the regulations would appear not only to conflict with the broader wording of the statute but to enunciate a trivial policy. Nothing of any importance would be accomplished by a law that permitted a university to engage in intensive propagandizing but threatened it with a loss of its tax exemption only if the propaganda included an explicit suggestion that legislators be contacted. The IRS Exempt Organizations Handbook, however, does not read the law as requiring a particular form of words: "The proscribed activity...includes all appeals to the general public, not merely those that contain a request to contact a legislator or take other specific action....If the underlying purpose is the advocacy of particular legislation, then there has been an attempt to influence legislation within the meaning of the Code."[12] The Handbook's interpretation seems obviously correct.

There is another apparent inconsistency, however, since other regulations suggest the propriety of attempts to influence legislation. Thus, the regulation covering charitable organizations states:

> The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under Section 501 (c) (3) so long as it is not an "action" organization...[13]

The regulation covering exempt educational organizations states:

> An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.[14]

This may seem to suggest that so long as a university presents a fair statement of the facts it can advocate or oppose legislation. So read, the regulation would run contrary to the language of Section 501 (c) (3) as well as to its policy. The inconsistency disappears, however, if we read the permissive regulations as designed to protect statements made in an explicitly educational context. Thus, arguments made in the classroom, in adult education seminars, and the like, do not endanger the institution's tax exempt status unless they take on the character of persistent propagandizing. An Internal Revenue Service ruling granting tax exempt status

to an organization devoted to consideration of social, political, and international questions by the promotion and sponsorship of a public forum noted the fact that the organization's charter specifically stated it should have no institutional point of view.[15]

The safest interpretation of the law, therefore, and the one most consistent with its language and policy would seem to be that universities in their official capacities should not take positions with respect to pending or imminent legislation or with respect to issues that control attitudes toward such legislation. Moreover, they should be careful that their public lectures, forums, and invited speakers do not take on the character of propagandizing by representing only one point of view.

A related question is whether Section 501 (c) (3) will be interpreted as preventing a university from conducting a campaign to influence legislation closely related or incidental to its operations or status as an educational institution. For example, if a university appeared before a state legislature to present its views on a proposed state tax applicable to private universities or a proposed state law regulating the conduct of students, would the university be held to have engaged in prohibited lobbying? In the leading case, *Slee* v. *Commissioner* (involving the exempt status of the American Birth Control League), Judge Learned Hand distinguished between attempts to influence legislation relating solely to the organization's status or ability to operate and attempts to influence legislation bearing upon broader public policy. An example of the former, according to Judge Hand, would be a university "constantly trying to get appropriations from the Legislature; for all that, it seems to us still an exclusively educational institution."[16] On the other hand, efforts by the Birth Control League seeking the repeal of laws dealing with conception, were branded by the court as political, and not exclusively charitable, educational, or scientific.

Thus, under *Slee*, all attempts to influence legislation relating to the organization's status or operation are permissible, and all attempts to influence other types of legislation are prohibited. In 1934, however, Congress amended the statute to prohibit attempts to influence legislation but only if constituting a "substantial" part of the organization's activities. This amendment can be read in the light of *Slee* as permitting any degree of legislative activity which relates to the status and operation of the organization. Alternatively, the statute may be viewed as completely overruling *Slee*, so that any attempt to influence legislation must be insubstantial. This appears to be the current interpretation of the statute, as illustrated by Revenue Ruling 70-449, 1970-35 IRB 9. In this ruling the IRS held that testimony by the head of the biology department of a university before a legislative committee regarding the effects of proposed legislation on research in the department was not an attempt to influence legislation. The ruling did not rely on the obviously available ground that the appearance was related to the university's operation, but rather held that the prohibition of attempts to influence legislation contemplates affirmative action by a university and not a "mere passive response to a committee invitation" to testify. Further, it should be noted that in two other areas where the tax law imposes a blanket prohibition upon attempts to influence legislation, Congress has deemed it necessary expressly to exclude activities addressed to legislation about the existence or operation of the party involved (Code §§162 (e) and 4945 (e)). Since Section 501 (c) (3) contains such an exception, it could be argued that the substantiality test applies to all attempts to influence legislation. While this is certainly a conceivable interpretation of the statute and comports with its literal language, the result seems neither wise nor necessary. There is no apparent policy reason why a university should not lobby about legislation which speaks

directly to its own educational performance. The "passivity" requirement of the ruling, moreover, is artificial since in most cases the university could arrange to be "invited." This problem probably should be clarified by regulation or further legislation.

A problem of a different order relates to the purposes for which organizations may attempt to influence legislation. Some cases hold that the proscriptions of Section 501 (c) (3) apply only to the support of legislation that does not further the public interest. Thus, the Court of Appeals for the Eighth Circuit held in *St. Louis Union Trust Co.* v. *United States* that the St. Louis Bar Association did not violate the prohibition against attempting to influence legislation although the association drafted, supported, and opposed legislation. The court's theory was that the association was "devoted to improvement of the law and of the administration of justice....This is public, not private, betterment."[17] This approach was in accord with the Second Circuit in *Dulles* v. *Johnson* which held attempts to influence legislation by a bar association to be outside the ambit of the statute on the ground that the attempts were "not intended for the economic aggrandizement of a particular group or to promote some larger principle of governmental policy."[18] The Third Circuit, however, has held that all attempts to influence legislation are prohibited by the statute, no matter what the organization's purpose and regardless of the public spirit of the organization's position.[19] This is true for at least two reasons. First, neither the language of the statute nor its murky legislative history give any hint of or opening for a distinction according to the court's view of the merits of the legislation. Second, the unguided judgment of what positions are in the public interest is one not properly confined to courts or administrators. As the Third Circuit said in *Kuper* v. *Commissioner:*

> ... Congress wisely refrained from distinguishing between types of legislation, very likely in order not to place upon the courts the usually impossible task of determining whether any particular law is unselfish and in the public interest or whether it serves private or selfish interest.[20]

That the Internal Revenue Service agrees with this position is indicated by the fact that it has challenged, successfully, the exemption of a national conservation group (the Sierra Club) which was opposing legislation on grounds that many, perhaps most, people would think in the public good.

A serious problem may be that of the university's involvement with groups that are engaging in direct lobbying of legislators or addressing the public in an effort to influence legislation. This problem may arise frequently because of the intense interest of faculty and students in political issues. Again, individual or group action not endorsed or supported by the university poses no threat to the university's tax exempt status. In determining "support," some realistic distinctions are necessary. Some uses of university funds and facilities can hardly be said to constitute support of the activity without infringing the proper area of individual freedom. Thus, the fact that an attempt to influence legislation is made by a faculty member on salary or a student on scholarship may not properly be held to implicate the university. Similarly, the use of some types of university facilities is inevitable in such cases, if only because many students and faculty members live on campus and customarily use certain facilities, such as the library, for a variety of purposes. The use of other types of facilities, such as computers, mailing lists, secretarial service, and the like for work not directly connected with education is not customary or inevitable and would raise serious problems.

It seems clear, of course, cash payments to groups attempting to influence legislation, or giving them the use of university facilities without compensation or

with only token compensation, would raise a serious danger. The guidelines issued by the American Council on Education state that there may under some circumstances be danger even when there is full compensation: "Extraordinary or prolonged use of facilities, particularly by nonmembers of the university community, even with reimbursement, might raise questions."[21] Questions may also be raised if the university alters normal academic expectations and requirements in order to facilitate efforts by members of the university community to attempt to influence legislation. The danger that the university will be held to have endorsed or supported an attempt to influence legislation is likely to be greatest if the university's action is in response to demands from a group promoting a known viewpoint.

Are the Acts a Substantial Part of the University's Activity?

Attempts to influence legislation are banned only when they comprise a "substantial" part of the university's activities. The Internal Revenue Service Handbook succinctly describes the difficulties inherent in this unexplained test:

> There is no simple rule as to what amount of activities is substantial. The one case on this subject is of very limited help. The *Seasongood* case held that attempts to influence legislation that constituted five percent of total activities were not substantial. This case provides but limited guidance because the court's view as to what sort of activities were to be measured is no longer supported by the weight of precedent. In addition it is not clear how the five percent figure was arrived at.
>
> Most cases have tended to avoid any attempt at percentage measurements of activities. The central problem is more often one of characterizing the various activities as attempts to influence legislation. Once this determination is made, substantiality is frequently self-evident.[22]

This suggests that the IRS may not measure substantiality by the fraction of the university's income devoted to attempting to influence legislation but may instead apply an absolute-amount test, perhaps holding any activity substantial that is not in absolute terms insignificant or de minimis. But an opposite view may be indicated by a Senate Committee report made in connection with the Tax Reform Act of 1969 which revised the law of private foundations. Speaking of Section 501 (c) (3), which remains unchanged in its application to universities, the Committee stated:

> . . . [A] large organization, merely because of the substantiality test, may engage without consequence in more lobbying than a small organization. . . . Moreover, the standards as to the permissible level of activities under the present law are so vague as to encourage subjective application of the sanction.[23]

The confusion is not significantly disspelled by the Internal Revenue Service's other applications of the statute. In suspending advance assurance of deductibility for contributions made to the Sierra Club the IRS stated:

> In . . . determin[ing] . . . whether political activities are a substantial part of an organization's activities . . . the activities which constitute attempting to influence legislation [are not] limited merely to time and effort directly devoted to acts of advocacy or to writing or otherwise directly contacting legislators . . . . [W]hile dollar amounts expended in carrying on activities to influence legislation may be some evidence of the substantiality of the activity, the relative amounts in dollars spent for

such activities in relation to total dollars expended by an organization is not controlling. The test is one of activity.[24]

This uncertainty about substantiality ought to be cleared up by the Internal Revenue Service or by further legislation. As matters stand, universities cannot be sure what is permitted and both the IRS and the courts may be reluctant to apply the severe sanction of the loss of exempt status in any but the clearest cases. The difficulties with a test keyed to a flat percentage of time and money expended are obvious. In a complicated and relatively unstructured organization, such as a university, measurement of total time expended on all activities attributable to the university would be extraordinarily complex and probably uncertain. And if such a measurement could be accomplished, a percentage figure, such as the suggested five percent, would permit very significant amounts of lobbying by large institutions. A university with a total annual budget of twenty million dollars could devote one million dollars to attempting to influence legislation every year, and that is the budget of a not very large university. Perhaps the most satisfactory interpretation of the substantiality requirement would be that all attempts to influence legislation are prohibited unless they are isolated and insignificant.

The Prohibition Against Participation Or Intervention in a Political Campaign

When the bill that was to become the Internal Revenue Code of 1954 was under consideration in the Senate, Senator Lyndon Johnson of Texas proposed an amendment from the floor to deny income tax exemption to organizations that participate or intervene in political campaigns on behalf of candidates. The amendment was accepted by the Chairman of the Senate Finance Committee and ultimately became the provision of Section 501 (c) (3) now under discussion. Senator Johnson did not, however, discuss his purpose when he introduced the amendment and there simply is no significant or illuminating legislative history to guide its interpretation.[25]

This "campaign" branch of Section 501 (c) (3) differs importantly from the provision relating to attempts to influence legislation because there is no requirement that the exempt organization's campaign activities be a substantial fraction of its total activities. Instead, the prohibition here is absolute. As the Internal Revenue Service has repeatedly stated, the exemption of an organization is forfeited by any act of participation or intervention.

The contours of the proscription are indicated by a few Treasury Regulations and Internal Revenue Service rulings. A Treasury Regulation defining "action organizations", which are not tax exempt, makes it clear that "the term 'candidate for public office' means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local."[26] The Internal Revenue Service has ruled that the legal issue under this section is not affected by the "nonpartisan" nature of endorsement of candidates. In denying status as a social welfare organization in a ruling equally applicable to educational institutions, the IRS said:

> The organization was formed for the purpose of promoting an enlightened electorate. Its primary activity in furtherance thereof is rating candidates for public office on a nonpartisan basis. In order to acquaint voters with candidates for local public offices, the organization analyzes the candidates' qualifications, such as education and experience. On the

basis of its conclusions, it rates candidates as average, good, or excellent, and disseminates these ratings to the public.

> *Comparative rating of candidates, even though on a nonpartisan basis, is participation or intervention on behalf of those candidates favorably rated and in opposition to those less favorably rated.* Because such participation or intervention does not come within the definition of promotion of social welfare and this activity is the organization's primary activity, it follows that the organization is not operated exclusively for the promotion of social welfare within the meaning of the applicable regulations.[27]

Though the ruling directly concerned Section 501 (c) (4), its rationale is completely applicable to Section 501 (c) (3).

The statute prohibits participation or intervention "on behalf" of any candidate. The Treasury Department apparently takes the view that participation or intervention is permitted if not intended to affect any candidate's chances. In connection with the Tax Reform Act of 1969, which altered the law as to private foundations but not as to educational institutions, the Treasury stated that existing law under Section 501 (c) (3) permitted voter registration drives, educational campaigns about issues presented for consideration by the general electorate, or panel discussions with candidates.[28] An organization's exemption would, of course, be endangered if any of these activities was undertaken in a nominally neutral way but was actually designed to advance or injure the cause of any particular candidate. Thus, a voter registration drive may be a permitted activity for a university if it is general and neutral, but it might easily be a prohibited activity if it were limited geographically or in any other way that would be likely to alter the outcome of an election campaign.[29]

This interpretation seems not to be consistent with either the tax equity or social policy rationale of the statute. Perhaps a better reading of the law is that the prohibition of intervention "on behalf of any candidate" means more than neutrality, and requires complete abstention. It is highly doubtful, for example, that a university that made equal cash contributions to all candidates in a race would be held not to have participated or intervened on behalf of any candidate. Allowing such contributions would certainly give an unfair advantage to political contributions made through the university and would not serve the goal of keeping universities out of partisan politics. The neutrality standard makes sense when the university is not making any contribution of its own. Thus, a university's permission to candidates to use its facilities for a fee should not be participation or intervention, provided the facilities are made equally available to all candidates. The neutrality standard also makes sense when the candidates contribute to the university's educational function. Thus, it would appear proper for the university to make an auditorium available, without charge, for a panel discussion, or a series of lectures, by all candidates before an audience made up from the university community. In short, any official act of the university that assists any or all candidates may be a forbidden participation or intervention unless the act occurs in a demonstrably educational context or the university is fully compensated for the use of its facilities.

A similar problem is raised when the university rearranges its schedule or alters its normal academic expectations and requirements to permit faculty and students to participate in political campaigns. We are not able to agree fully with the thrust of the advice offered on this subject by the Guidelines of the American Council on Education which state:

> The mere rearrangement of an academic calendar for the purpose of permitting students, faculty and other members of the academic community to participate in the election process, without more, would not be deemed intervention or participation by the institution itself in a campaign on behalf of a candidate. Nor does it constitute proscribed legislative activity. This assumes that the recess period is in fact a substitute for another period which would have been free of curricular activity, and that the university itself does not otherwise intervene in a political campaign. During the period of the recess, members of the academic community should be entirely free to participate in the election process or not as they choose and should be so advised. The case may be different if the academic calendar, in fact, is shortened rather than rearranged for the purpose of permitting students, faculty and other members of the academic community to participate in the election process. In that case the question might be raised whether releasing faculty and staff members from normal duties, with pay, to participate in the process represents an indirect participation by the institution itself in a political campaign on behalf of a candidate for public office. Presumably those whose employment obligation is not limited to or governed by the academic year could be permitted to adjust their vacation period to permit time off during a political campaign in lieu of a vacation at another time. (Shortening of the calendar could also generate complaints that the institution is not providing a full term of instruction.[30]

There may be no problem if the academic calendar is rearranged as a permanent matter and this decision is taken without reference to particular issues and campaigns. But there would appear to be at least the possibility of a danger if the calendar is rearranged at the request or demand of groups within the university community that the university knows intend to take one side in a campaign. In such circumstances, arguably, the university may be contributing to the campaign just as much as if it ran a voter registration drive that it knew would substantially aid one candidate rather than the other. Making up the classes missed in a rearrangement of the calendar may avoid the charge that the university indirectly financed candidates but it does not avoid the reality of a dramatic intervention in the campaign.[31]

There may be, however, one type of exception to the general rule that a university's involvement with a political campaign must be neutral. Treasury Regulations about unrelated business income contain the following example:

> *Example (5).* Y, an exempt university, provides facilities, instruction and faculty supervision for a campus newspaper operated by its students. In addition to news items and editorial commentary, the newspaper publishes paid advertising. The solicitation, sale, and publication of the advertising are conducted by students, under the supervision and instruction of the university. Although the services rendered to advertisers are of a commercial character, the advertising business contributes importantly to the university's educational program through the training of the students involved. Hence, none of the income derived from publication of the newspaper constitutes gross income from unrelated trade or business. The same result would follow even though the newspaper is published by a separately incorporated section 501 (c) (3) organization, qualified under the university rules for recognition of student activities, and even though such organization utilizes its own facilities and is in-

> dependent of faculty supervision, but carries out its educational purposes by means of student instruction of other students in the editorial and advertising activities and student participation in those activities.[32]

The theory behind this example appears to be that a student newspaper (or, one would suppose, radio station) may do things denied to the university as a whole because part of the training function is to operate like a regular, commercial newspaper. For that reason, students may solicit advertisements and the paper may receive income that would be taxable if the university itself had done the same thing. By a parity of reasoning, it seems likely that the student newspaper, as part of the training function, may take editorial positions on legislation and political candidates just as other newspapers do without costing the university its tax exemption under Section 501 (c) (3). But it must be noted that this conclusion cannot be said with certainty to be the law. The IRS is presently investigating the *Columbia Daily Spectator's* tax exemption because of that paper's editorial stands.[33]

NOTES

1. Public colleges and universities are exempt from the federal income tax because they are arms of the states or their instrumentalities which are exempt from tax on a constitutional basis. Likewise, contributions to public colleges and universities are deductible because Code § 170 allows a charitable deduction for contributions to states, their instrumentalities and subdivisions, as long as the gift is made for exclusively public purposes.
2. Cumulative List of Organizations described in section 170 of the Internal Revenue Code of 1954. Publication No. 78 (Rev. 12-31-68). (Hereinafter cited as Cumulative List.)
3. Cumulative List, p. i, ii: "Where an organization listed in this publication ceases to qualify as an organization contributions to which are deductible under section 170 and the Service subsequently revokes a ruling or a determination letter issued to it, contributions made to the organization by persons unaware of the change in the status of the organization generally will be considered allowable until (1) the date of publication of an announcement in the Internal Revenue Bulletin that contributions are no longer deductible or (2) a date specified in such an announcement where deductibility is terminated as of a different date.

   In appropriate cases, however, this advance assurance of deductibility of contributions made to an organization listed in this publication may be suspended pending verification of continuing section 170(c) qualification. Notice of such suspension will be made in a public announcement by the Service. In such cases allowance of deductions for contributions made after the date of the announcement will depend upon statutory qualification of the organization under section 170.

   In any event, the Service is not precluded from disallowing any contributions made after an organization ceases to qualify under section 170 where the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for, or was aware of, the activities or deficiencies on the part of the organization which gave rise to the loss of qualification." See also Rev. Proc. 68-17, 1968-1, Cum. Bull. 806.
4. H.R. Rep. No. 413, 91st Cong., 1st Sess, pt. 1, p. 32 (1969).
5. Appeal to the U.S. Supreme Court dismissed for want of jurisdiction, June 15, 1970; Cannon v. Green, 38 U.S.L.W. 3496 (U.S. June 15, 1970).
6. See 26 U.S.C. §162 (e) (2); 26 U.S.C. § 170 (c); 26 U.S.C. § 276.
7. Section 170, governing the deductibility of contributions to exempt organizations, has long contained the clause denying a deduction for contributions to organizations that attempted to influence legislation. Only last year it was amended to add the clause against participation or intervention in political campaigns. But the Internal Revenue Service had previously issued regulations interpreting section 170 as containing the second prohibition.
8. Treas. Reg. § 1.501 (c) (3)-1 (c) (3) (iii) (1967); all the Treasury Regulations under § 1.501 (c) (3) are reprinted in Appendix B.
9. American Council on Education (ACE) Guidelines, Appendix C, p. 48. A complete text of the ACE Guidelines appears in Appendix C.
10. Throughout the discussion of prohibited activities we will assume, unless we raise the issues specifically, there to be no question that the university is acting and that the action is a "substantial part" of its activities.
11. Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) (1967).
12. U.S. Treasury Department, Internal Revenue Service, *Exempt Organizations Handbook*, §762(2); see also *The Tax Exempt Organization, A Practical Guide* (IRS Handbook), para 419.01, pp. 7809 (CCH, 1969).
13. Treas. Reg. § 1.501(c)(3)-1(d)(2) (1967).
14. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i)(b) (1967).
15. Rev. Rul. 66-256, 1966-2 Cum. Bull. 210.
16. 42 F. 2d 184, 185 (2d Cir. 1930).
17. 374 F. 2d 427, 435-36 (8th Cir. 1967).

18. 273 F. 2d 362, 367 (2d Cir. 1959), *cert. denied*, 364 U.S. 834 (1960).
19. Kuper v. Commissioner, 332 F. 2d 562 (3d Cir.), *cert. denied*, 379 U.S. 920 (1964).
20. *Ibid.*, p. 563.
21. ACE Guidelines, Appendix C. p. 48.
22. U.S. Treasury Department, Internal Revenue Service, *Exempt Organizations Handbook*, § 764; see also *The Tax Exempt Organization, A Practical Guide* (IRS Handbook), para. 419.03, p. 79 (CCH, 1969).
23. S. Rept. No. 552, 91st Cong., 1st Sess., p. 47 (1969).
24. Letter from the District Director to Sierra Club, Dec. 16, 1966, reprinted in 6 P-H Fed. Taxes para 54,664, p. 54, 528.
25. 100 Cong. Rec. 9604 (1954).
26. Treas. Reg.§ 1.501 (c)(3)-1 (c)(3)(iii) (1967).
27. Rev. Rul. 67-368, 1967-2 Cum. Bull. 190.
28. Technical Explanation of Treasury Tax Reform Proposals, prepared by the Department of the Treasury, dated April 22, 1969, and contained in U.S. House of Representatives Committee on Ways and Means, Committee Print on Tax Reform Proposals, April 22, 1969, at p. 127.
29. The Senate Finance Committee in its report (S. Rep. No. 552, 91st Cong., 1st Sess., p. 49 (1969) on the Tax Reform Act of 1969 (H.R. 13270)) stated that: "The committee believes that it is impossible to give assurances in all cases that voter registration drives would be conducted in a way that does not influence the outcome of public elections. In fact, the usual motivation of those who conduct such drives is to influence the outcome of public elections."
30. ACE Guidelines, Appendix C, p. 48.
31. Since the Commissioner of Internal Revenue has acknowledged the fairness and reasonableness of the ACE Guidelines, a university which has rearranged its schedule may be able to rely on those guidelines. However, the legal effect of the guidelines is unclear.
32. Treas. Reg.§ 1.513-1(d)(4)(iv) (1967).
33. See *The New York Times*, June 27, 1970, p. 1, col. 7.

CRIMINAL CODE PROVISIONS

Political Expenditures by Incorporated Institutions

The most severe federal restriction on political campaign activities is contained in Section 610 of Title 18 of the Criminal Code. This prohibition, derived from the Corrupt Practices Act, provides in relevant part as follows:

> It is unlawful...for *any corporation whatever*, or any labor organization to make a contribution or expenditure *in connection with* any election at which Presidential and Vice Presidential electors or a Senator or Representative in... Congress are to be voted for, or *in connection with* any primary election or political convention or caucus held to select candidates for any of the foregoing offices....[1]

Penalties - Coverage of Officers and Directors of Incorporated Institutions. The prohibition in Section 610 applies to every officer and director of an incorporated institution who consents to a contribution or expenditure as well as to the corporation itself. It provides that –

> Every corporation which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, who consents to any contribution or expenditure by the corporation...shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.[2]

Contribution of "Anything of Value" Prohibited. The terms "contribution or expenditure" are defined to include a gift, loan, or advance of money, or *"anything of value."* They also include a "promise, or agreement" to make a contribution or expenditure in connection with an election.[3]

Coverage of Corporate Colleges and Universities. While it is doubtful that Congress had colleges and universities in mind when it enacted the criminal provisions against political contributions by incorporated institutions, the statute refers to "any corporation whatever," and as pointed out by the late Senator Taft, even an incorporated church "cannot take the church members' money and use it for the purpose of trying to elect a candidate or defeat a candidate, and they should not do so."[4]

Most Colleges And Universities Are Corporations. It appears that most colleges and universities are incorporated. Some that are not incorporated are state institutions. But many of the state institutions such as the Universities of Illinois, Michigan (provided for in the state Constitution) and Maryland, are corporations. Even though a state contributes to the support of a college or university, this does not make it necessarily an organ of the state so as to exlude it from coverage of a federal statute.[5]

The broad language of the statute – "any corporation whatever" – and its legislative history leave little doubt that it covers incorporated colleges and universities with the exception of some institutions that may operate as integral parts of state governments.

Expenditures "In Connection With" an Election. In response to the argument that the term "contribution" as used in Section 610 was not intended to cover contributions unless made directly to a candidate, the Congress, in 1947, clarified the provision by adding the term "expenditure" so as to "plug the loophole" and cover indirect corporate expenditures in connection with elections. For example, as

pointed out by the Supreme Court, a payment for television advertisements on behalf of a candidate is "precisely the kind of indirect contribution" covered by the term "expenditures."[6]

It follows, therefore, that Section 610, literally construed, makes it unlawful for a corporate university to contribute directly or indirectly, anything of value (such as the use of facilities or personnel) in connection with a federal election.

On the question of coverage of indirect political expenditures, the government (Department of Justice) has taken the position that Section 610 covers payment by a corporation of the salary of an employee during periods when he is engaged on company time in a campaign on behalf of a candidate or *in advocating the position of a political party on an issue in a political campaign.*

A memorandum issued by the Department of Justice on January 26, 1962, contained the following general observations:

> Salaries and wages of corporate or labor union officers and regular employees while engaged in political activities of supporting a candidate for nomination or election to a federal office, would constitute expenditures within the meaning of Section 610. This would also be true even if the activities of the officer or employee did not relate to a particular federal candidate but did relate to the objectives of a political party in connection with a specific federal election. That the interest of the corporation happened to be served by the political activities of the officer or employee would not militate against applicability of the statute.
>
> The amount of the expenditure would be the amount of the salary or wage allocable to the political activity of the officer or employee.
>
> > *Example:* Mr. Jones, a Vice President of Acme Tractor Manufacturing Company, receives a salary of $36,000 a year. He devoted all his time during September and October 1960 to making speeches in behalf of the Congressional candidate of the X Party, and the corporation continued to pay him his salary for those months. One of the issues in the campaign was whether or not tariffs should be lowered for equipment, including farm machinery. The X Party opposed lowering such tariffs while the opposition party favored doing so.
> >
> > The corporation would be deemed to have made an illegal expenditure amounting to $6,000 in connection with the election of the Congressional candidate of the X Party.
> >
> > If Mr. Jones had devoted only the month of October to the political activity mentioned, the illegal expenditure would have been $3,000.
> >
> > If Mr. Jones had not campaigned for the Congressional candidate of the X Party but had devoted his time to endorsing the position of the X Party on the tariff question, the corporation would still be deemed to have made an illegal expenditure.
> >
> > Mr. Jones, as an individual, would of course be free to engage in political activity provided he did not do so on company time.[7]

Consistent with this view, the department, on July 31, 1970, obtained a conspiracy indictment against a bank including a charge that "...the bank would...be caused to bear the expenses of election campaigns by means of lending the services of salaried bank employees to campaign organizations while continuing to pay their salaries, donating postage, and permitting regular overdrafts on accounts used for political purposes."[8]

Presumably, the employee-lending rule would apply where a college permits members of its faculty to campaign while continuing to pay their salaries. But as indicated earlier in this analysis, the question of whether a professor or university president is being paid for time devoted to campaign activities may not be so easily determined. A faculty member, for example, unlike a bank employee, may not be required to spend more than several hours a week in class leaving him free to spend the rest of the week as he sees fit. How much of this "free time" is paid for by the university for preparation, research, etc., and how much may be devoted to political campaigning without involving university expenditures? This problem has been discussed in connection with the Internal Revenue Code provisions.

Expenditures For Intra-Corporate Communications. A reasonable inference to be drawn from Supreme Court cases involving Section 610 is that expenditures for regular intra-corporate communication whether partisan or nonpartisan are permissible. In the CIO case,[9] the union endorsed a candidate for Congress in its newspaper. The paper was distributed as usual to union members and to other persons affiliated with the union. In deciding that Section 610 does not cover expenditures for such an endorsement, the Supreme Court said:

> If [section 610] were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures or the election to office of men espousing such measures, the gravest doubt would arise in our minds as to its constitutionality...we hold that the language itself, coupled with the dangers of unconstitutionality, supports the interpretation which we have placed upon it.

"The evil at which Congress has struck," said Justice Frankfurter, in the CIO case, "is the use of corporation or union funds to influence *the public at large* to vote for a particular candidate or a particular party."

This, of course, suggests that the statute would not be applied to candidate endorsements in regular periodicals regularly distributed to university trustees and employees.

It suggests, also, that such publications would not be covered if distributed to students and supporting alumni. Regular publications distributed regularly to students might be permitted on the ground that they are customers of the university and alumni publications on the ground that alumni, as in the case of corporate stockholders, are a part of the college family. But it should be noted with care that conclusive answers as to application to educational institutions of the Courts' dictum regarding political endorsements in intra-corporate publications must await judicial clarification.

Insubstantial Expenditures—Would the De minimis Rule Apply? As indicated earlier, the rule against tax exempt educational institutions engaging in activities *to influence legislation* does not bar insubstantial ("de minimis") activities for this purpose. But Section 610 is a criminal provision and the rule of "de minimis non curat lex" does not apply in criminal cases.[10] On the other hand, a district court found it difficult to believe that Congress intended to cover insignificant expenditures[11] and it is reasonable to assume that the government will not prosecute a Section 610 case involving insignificant political expenditures.

Recent Prosecutions Under Section 610. Since 1968 there have been 18 criminal prosecutions based on contributions or expenditures in connection with federal elections. Fourteen of the defendants plead guilty or nolo contendere. Fines ($50,000

each in two cases) have been imposed in 14 of these cases. In another case, now on appeal, a fine was imposed and each individual officer involved was sentenced to one year in prison. In one case the defendant was acquitted. The other two cases, according to a recent report, are still pending. (See Appendix F)

NOTES

1. 18 U.S.C. 610. Emphasis added. See Appendix A.
2. *Ibid.*
3. 18 U.S.C. 591. The first statute in 1907 made unlawful a "money contribution" by any corporation in connection with federal elections. In 1925, the term "contribution" was substituted for "money contribution" and defined to include "anything of value."
4. 93 *Congressional Record* 6440 (1947). In a colloquy on the Senate floor between the late Senator Robert Taft, the floor manager of the 1947 amendment extending the statute to labor unions, and Senator Warren Magnuson (D., Wash.), the following statements were made:

   Mr. Magnuson: ...Let me ask the Senator from Ohio a further question. Would the provision in any way deny the right of a religious organization to publish pamphlets in behalf of a candidate because, let us say, the organization supported him on moral grounds?

   Mr. Taft: If the organization is a corporation...(and) publishes religious papers that it can sell, that is all right but the organization cannot take the church members' money and use it for the purpose of trying to elect a candidate or defeat a candidate, and they should not do so.
   93 *Congressional Record* 6550, 80th Cong., 1st Sess., (1947)
5. Fletcher, *Cyclopedia of the Law of Private Corporations,* Vol. I, Section 62 (1969). The Supreme Court has made it clear that for most legal purposes an incorporated college is a "corporation." See *The Trustees of Dartmouth College* v. *Woodward,* 4 Wheat. 518, 4 L. Ed. 629 (1819).
6. U.S. v. U.A.W., 352 U.S. 567, 585 (1957). For excellent discussions of the decided cases, see Lambert, "Corporate Political Spending and Campaign Finance," 40 N.Y.U.L Rev. 1033 (1965) and Rauh, "Legality of Union Political Expenditures," 30 So. Cal. L. Rev. 152 (1961). See also *U.S.* v. *C.I.O.*, 335 U.S. 106 (1948).
7. Department of Justice Memorandum, January 26, 1962 (on file in New York University Law Review Library).
8. U.S. v First Western State Bank of Minot, North Dakota (N.D. 1970)
9. U.S. v. CIO, 335 U.S. 106 (1948)
10. U.S. v. Construction and General Laborers Local Union, 101 F. Supp. 869 (1951)
11. *Ibid.*

APPENDIX A
PROVISIONS OF RELEVANT STATUTES

Internal Revenue Code of 1954:

26 U.S.C. §170(a),(c)

(a) **Allowance of deduction.** –

(1) **General rule.** – There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

* * *

(c) **Charitable contribution defined.** – For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of –

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation –

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

26 U.S.C. §501(a)

(a) **Exemption from taxation.** – An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

26 U.S.C. §501(c)(1),(3)

(c) **List of exempt organizations.** – The following organizations are referred to in subsection (a):

(1) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes.

* * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public

safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

26 U.S.C. §2055(a)(1),(2)

(a) **In general.**—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)—

(1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

26 U.S.C. §2522(a)(1),(2)

(a) **Citizens or residents.**—In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

Federal Corrupt Practices Act:

18 U.S.C. §591. **Definitions.**

When used in sections 597, 599, 602, 609 and 610 of this title—

The term "election" includes a general or special election, but does not include a primary election or convention of a political party;

The term "candidate" means an individual whose name is presented for election as Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, whether or not such individual is elected;

The term "political committee" includes any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates or presidential and vice presidential electors (1) in two or more States, or (2) whether or not in more than one State if such committee, association, or organization (other than a duly organized State or local committee of a political party) is a branch or subsidiary of a national committee, association, or organization;

The term "contribution" includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable;

The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable;

The term "person" or the term "whoever" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons;

The term "State" includes Territory and possession of the United States.

18 U.S.C. §610. **Contributions or expenditures by national banks, corporations or labor organizations.**

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

18 U.S.C. §611. **Contributions by firms or individuals contracting with the United States.**

Whoever, entering into any contract with the United States or any department

or agency thereof, either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof, or selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, during the period of negotiation for, or performance under such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly makes any contribution of money or any other thing of value, or promises expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

Whoever knowingly solicits any such contribution from any such person or firm, for any such purpose during any such period—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

APPENDIX B
TABLE OF AUTHORITIES

Cases:

American Institute for Economic Research v. *United States*, 302 F. 2d 934 (Ct. Cl. 1962).

Anglo-Swedish Society v. *C.I.R.*, 16 Tax. Cas. 34 (K.B. 1931).

Better Business Bureau v. *United States*, 326 U.S. 279 (1945).

Blaine, Estate of Anita McCormick, 22 T.C. 1195 (1954).

Bonar Law Memorial Trust v. *C.I.R.*, 17 Tax. Cas. 508 (K.B. 1939).

Bureau of Jewish Employment Problems v. U.S. (D. Ill. Oct. 5, 1954).

Cammarano v. *U.S.*, 358 U.S. 498 (1959).

C.I.R. v. *The Temperance Council of the Christian Churches of England and Wales*, 10 Tax. Cas. 748 (K.B. 1926).

Cochran v. *Comm.*, 78 F. 2d 176 (4th Cir. 1935).

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Cook, Alfred A., 30 B.T.A. 292 (1934).

Coxe, Sophia G., 5 B.T.A. 261 (1926).

Dahlinger, Charles W., 20 B.T.A. 176 (1930).

Davis, Martha Hubbard, 22 T.C. 1091 (1954).

DeForest, Robert W., 19 B.T.A. 595 (1930).

DeJonge v. *Oregon*, 299 U.S. 353 (1937).

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Treasury Regulations:

§1.170-1(f) Exceptions. (1) This section does not apply to contributions by estates and trusts (see section 642(c)). For disallowance of certain charitable deductions otherwise allowable under section 170, see sections 503(e) and 681(b) (5) (relating to organizations engaged in prohibited transactions). For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950 as amended (50 U.S.C. 790). For denial of deduction for charitable contributions as trade or business expenses and rules with respect to treatment of payments to organizations other than those described in section 170(c), see section 162 and the regulations thereunder.

(2) No deduction shall be allowed under section 170 for amounts paid to an organization—

(i) A substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or

(ii) Which participates in or intervenes in any political campaign on behalf of any candidate for public office. For purposes of determining whether an organization is attempting to influence legislation or is engaging in political activities, see section 501(c) (3) and the regulations thereunder. Moreover, no deduction shall be allowed under section 170 for expenditures for lobbying purposes, promotion or defeat of legislation, etc. See also the regulations under section 162.

§1.501(c)(3)-1. Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.—(a) *Organizational and operational tests.* (1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

(2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

(b) *Organizational test*—(1) *In general.* (i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

(*a*) Limit the purposes of such organization to one or more exempt purposes; and

(*b*) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(ii) In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3). Therefore, an organization which, by the terms of its articles, is formed "for literary and scientific purposes" within the meaning of section 501(c) (3) of the Code shall, if it otherwise meets the requirements in this paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely "to receive contributions and pay them over to organizations which are described in section 501(c)(3) and exempt from taxation under section 501(a)" are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for "charitable purposes", such articles ordinarily shall be sufficient for purposes of the

organizational test (see subparagraph (5) of this paragraph for rules relating to construction of terms).

(iii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501 (c)(3). Thus, an organization that is empowered by its articles "to engage in a manufacturing business", or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of section 501(c) (3) of the Code."

(iv) In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(v) An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption (see paragraph (b) of §1.501(a)-1).

(2) *Articles of organization.* For purposes of this section, the term "articles of organization" or "articles" includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

(3) *Authorization of legislative or political activities.* An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it –

(i) To devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or

(ii) Directly or indirectly to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or

(iii) To have objectives and to engage in activities which characterize it as an "action" organization as defined in paragraph (c)(3) of this section.

The terms used in subdivisions (i), (ii), and (iii) of this subparagraph shall have the meanings provided in paragraph (c)(3) of this section.

(4) *Distribution of assets on dissolution.* An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

(5) *Construction of terms.* The law of the State in which an organization is created shall be controlling in construing the terms of its articles. However, any organization which contends that such terms have under State law a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the State attorney-general, or other evidence of applicable State law.

(6) *Applicability of the organizational test.* A determination by the Commissioner or a district director that an organization is described in section 501(c)(3) and exempt under section 501(a) will not be granted after July 26, 1959 (regardless of when the application is filed), unless such organization meets the organizational test prescribed by this paragraph. If, before July 27, 1959, an organization has been determined by the Commissioner or district director to be exempt as an organization described in section 501(c)(3) or in a corresponding provision of prior law and such determination has not been revoked before such date, the fact that such organization does not meet the organizational test prescribed by this paragraph shall not be a basis for revoking such determination. Accordingly, an organization which has been determined to be exempt before July 27, 1959, and which does not seek a new determination of exemption is not required to amend its articles of organization to conform to the rules of this paragraph, but any organization which seeks a determination of exemption after July 26, 1959, must have articles of organization which meet the rules of this paragraph. For the rules relating to whether an organization determined to be exempt before July 27, 1959, is organized exclusively for one or more exempt purposes, see 26 CFR (1939) 39.101(6)-1 (Regulation 118) as made applicable to the Code by Treasury Decision 6091, approved August 16, 1954 (19 F. R. 5167; C. B. 1954-2, 47).

(c) *Operational test*—(1) *Primary activities.* An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(2) *Distribution of earnings.* An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words "private shareholder or individual", see paragraph (c) of §1.501(a)-1.

(3) *"Action" organizations.* (i) An organization is not operated exclusively for one or more exempt purposes if it is an "action" organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph.

(ii) An organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization—

(*a*) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(*b*) Advocates the adoption or rejection of legislation. The term "legislation", as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(iii) An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition

to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(iv) An organization is an "action" organization if it has the following two characteristics: (*a*) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (*b*) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

(v) An "action" organization, described in subdivisions (ii) or (iv) of this subparagraph, though it cannot qualify under section 501(c)(3), may nevertheless qualify as a social welfare organization under section 501(c)(4) if it meets the requirements set out in paragraph (a) of §1.501(c)(4)-1.

(d) *Exempt purposes*—(1) *In general.* (i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

(*a*) Religious,
(*b*) Charitable,
(*c*) Scientific,
(*d*) Testing for public safety,
(*e*) Literary,
(*f*) Educational, or
(*g*) Prevention of cruelty to children or animals.

(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

(iii) Since each of the purposes specified in subdivision (i) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational", exemption will not be denied if, in fact, it is "charitable".

(2) *Charitable defined.* The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Gov-

ernment; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an "action" organization of any one of the types described in paragraph (c)(3) of this section.

(3) *Educational defined*—(i) *In general.* The term "educational", as used in section 501(c)(3), relates to—

(*a*) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(*b*) The instruction of the public on subjects useful to the individual and beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(ii) *Examples of educational organizations.* The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

Example (1). An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example (2). An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Example (3). An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

Example (4). Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

(4) *Testing for public safety defined.* The term "testing for public safety", as used in section 501(c)(3), includes the testing of consumer products, such as electrical products, to determine whether they are safe for use by the general public.

(5) *Scientific defined.* (i) Since an organization may meet the requirements of section 501(c)(3) only if it serves a public rather than a private interest, a "scientific" organization must be organized and operated in the public interest (see subparagraph (1)(ii) of this paragraph). Therefore, the term "scientific", as used in section 501(c)(3), includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with "scientific"; and the nature of particular research depends upon the purpose which it serves. For research to be "scientific", within the meaning of section 501(c)(3), it must be carried on in furtherance of a "scientific" purpose. The determination as to whether research is "scientific" does not depend on whether such

research is classified as "fundamental" or "basic" as contrasted with "applied" or "practical". On the other hand, for purposes of the exclusion from unrelated business taxable income provided by section 512(b)(9), it is necessary to determine whether the organization is operated primarily for purposes of carrying on "fundamental", as contrasted with "applied", research.

(ii) Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

(iii) Scientific research will be regarded as carried on in the public interest—

(*a*) If the results of such research (including any patents, copyrights, processes, or formulae resulting from such research) are made available to the public on a nondiscriminatory basis;

(*b*) If such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or

(*c*) If such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

(*1*) Scientific research carried on for the purpose of aiding in the scientific education of college or university students;

(*2*) scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public;

(*3*) scientific research carried on for the purpose of discovering a cure for a disease; or

(*4*) scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in this subdivision (*c*) will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulae resulting from such research.

(iv) An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under section 501(c)(3) as a "scientific" organization, if—

(*a*) Such organization will perform research only for persons which are (directly or indirectly) its creators and which are not described in section 501(c)(3), or

(*b*) Such organization retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulae resulting from its research and does not make such patents, copyrights, processes, or formulae available to the public. For purposes of this subdivision, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, process, or formula, such patent, copyright, process, or formula shall be considered as made available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be utilized to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest (within the meaning of

subdivision (iii) of this subparagraph) only if it is carried on for a person described in subdivision (iii) (*b*) of this subparagraph or if it is scientific research described in subdivision (iii) (*c*) of this subparagraph.

(v) The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in section 501(c)(3) will not preclude such organization from meeting the requirements of section 501(c)(3) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research (see paragraph (e) of this section, relating to organizations carrying on a trade or business). See paragraph (a)(5) of §1.513-2, with respect to research which constitutes an unrelated trade or business, and section 512(b)(7), (8), and (9), with respect to income derived from research which is excludable from the tax on unrelated business income.

(vi) The regulations in this subparagraph are applicable with respect to taxable years beginning after December 31, 1960.

(e) *Organizations carrying on trade or business*—(1) *In general.* An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization. See, however, section 501(d) and §1.501(d)-1, relating to religious and apostolic organizations.

(2) *Taxation of unrelated business income.* For provisions relating to the taxation of unrelated business income of certain organizations described in section 501 (c)(3), see sections 511 to 515, inclusive, and the regulations thereunder.

(3) *Prohibited transactions and accumulations.* For provisions relating to the denial of exempt status to certain organizations described in section 501(c)(3) for engaging in certain prohibited transactions or unreasonably accumulating income, see sections 503 and 504 and the regulations thereunder.

(f) *Applicability of regulations in this section.* The regulations in this section are, except as otherwise expressly provided, applicable with respect to taxable years beginning after July 26, 1959. For the rules applicable with respect to taxable years beginning before July 27, 1959, see 26 CFR (1939) 39.101(6)-1 (Regulations 118) as made applicable to the Code by Treasury Decision 6091, approved August 16, 1954 (19 F. R. 5167; C. B. 1954-2, 47).

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APPENDIX C
STATEMENT OF THE AMERICAN COUNCIL ON EDUCATION

GUIDELINES ON QUESTIONS RELATING TO TAX EXEMPTION AND POLITICAL ACTIVITIES

Recent activities on college campuses have given rise to expressions of concern within colleges and universities and on the part of members of Congress and others that institutions of higher education may inadvertently or otherwise involve themselves in political campaigns in such a way as to raise questions as to their entitlement to exemption under Section 501(c)(3) of the Internal Revenue Code and as to liability under other provisions of Federal law. Activities which would bring into serious question the entitlement of a college or university to tax exemption could undermine the private support of higher education as a whole, so essential to the very existence of many such institutions. For this reason, educational institutions benefiting from the tax exemption should be aware of the problem and exercise care to make certain that their activities remain within the limits permitted by the statute.

Exemption of colleges and universities from Federal income taxes is dependent upon their qualifying as institutions organized and operated *exclusively* for religious, charitable, or educational purposes described in Section 501(c)(3) of the Internal Revenue Code. For some years that section has provided that "no substantial part of the activities of" an exempt institution may be "carrying on propaganda, or otherwise attempting, to influence legislation" and further, that an exempt institution may "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

By the Tax Reform Act of 1969, the last-quoted prohibition was incorporated in companion provisions of the Internal Revenue Code dealing with the deduction of contributions for income, gift and estate tax purposes. As interpreted, this provision would deny exempt status to institutions engaging in legislative activities which are *substantial* in the light of all the facts and circumstances. Additionally, it *absolutely* proscribes participation in or intervention by an exempt institution in any "political campaign on behalf of any candidate for public office."

The mere rearrangement of an academic calendar for the purpose of permitting students, faculty and other members of the academic community to participate in the election process, without more, would not be deemed intervention or participation by the institution itself in a campaign on behalf of a candidate. Nor does it constitute proscribed legislative activity. This assumes that the recess period is in fact a substitute for another period which would have been free of curricular activity, and that the university itself does not otherwise intervene in a political campaign. During the period of the recess, members of the academic community should be entirely free to participate in the election process or not as they choose and should be so advised. The case may be different if the academic calendar, in fact, is shortened rather than rearranged for the purpose of permitting students, faculty and other members of the academic community to participate in the election process. In that case the question might be raised whether releasing faculty and staff members from normal duties, with pay, to participate in the process represents an indirect participation by the institution itself in a political campaign on behalf of a

candidate for public office. Presumably those whose employment obligation is not limited to or governed by the academic year could be permitted to adjust their vacation period to permit time off during a political campaign in lieu of a vacation at another time. (Shortening of the calendar could also generate complaints that the institution is not providing a full term of instruction.)

Educational institutions traditionally have recognized and provided facilities on an impartial basis to various activities on the college campuses, even those activities which have a partisan political bent, such as for example, the Republican, Democratic and other political clubs. This presents no problem. However, to the extent that such organizations extend their activities beyond the campus, and intervene or participate in campaigns on behalf of candidates for public office, or permit nonmembers of the university community to avail themselves of university facilities or services, an institution should in good faith make certain that proper and appropriate charges are made and collected for all facilities and services provided. Extraordinary or prolonged use of facilities, particularly by nonmembers of the university community, even with reimbursement, might raise questions. Such organizations should be prohibited from soliciting in the name of the university funds to be used in such off-campus intervention or participation.

Every member of the academic community has a right to participate or not, as he sees fit, in the election process. On the other hand, no member of that community should speak or act in the name of the institution in a political campaign.

In order to assure compliance with the requirements of Section 501(c)(3), universities in their corporate capacities should not intervene or participate in any campaign by endorsing or opposing a candidate or taking a position on an issue involved in the campaign for the purpose of assisting or opposing a candidate. Those who in their official capacity frequently speak for the university should undertake to make it clear when expressing individual views that they are not stating a university position. Whether or not a university has participated in or intervened in a campaign within the meaning of the Internal Revenue Code can be determined only by looking at all past and present facts and circumstances relevant to the question.

We would make three further observations:

1. Colleges and universities may be subject to restraints of the Corrupt Practices Act which forbid corporations or labor unions from making direct or indirect contributions in connection with political campaigns (including primaries). Adherence to the Internal Revenue Code restrictions discussed above should eliminate any questions in connection with this Act.

2. State law governing all of the above may be more stringent and should be examined.

3. There may be special restrictions on the use of facilities provided in whole or in part with Federal funds.

June 19, 1970

Commissioner
Internal Revenue Service
Washington, DC 20224

June 17, 1970

Dear Mr. Wilson:

I appreciate your sending me a copy of the proposed statement of the American Council on Education, designed to provide colleges and universities guidance in matters pertaining to their tax exempt status under Section 501 (c) (3) of the Internal Revenue Code as it might be affected by intervention or participation in political campaigns.

I have reviewed the statement and believe that it sets forth fair and reasonable guidelines with respect to the applicability of the relevant provisions of the Internal Revenue Code. I would like to commend the Council on developing these guidelines for the benefit of its members and other colleges and universities of the country.

Sincerely yours,

[Signed Randolph W. Thrower]

Randolph W. Thrower
Commissioner

Mr. Logan Wilson
President
American Council on Education
One Dupont Circle
Washington, D.C. 20036

APPENDIX D
PRINCETON UNIVERSITY STATEMENT OF POLICY AND GUIDELINES

President's Room

July 31, 1970

To: Trustees and Alumni Leaders

From: Robert F. Goheen

Subject: University Guidelines on On-Campus Political Activities

The matter of political activities on the campus in relation both to the educational role of the University and its tax-exempt status has been of concern to many of the Trustees and alumni, as well as to us in the Administration.

Therefore I enclose for your information a policy statement and guidelines which have been developed with the aid of the Executive Committee of the Trustees and are currently in effect.

In endorsing this statement of policy and guidelines, the Executive Committee emphasized the fact that the University must not and would not take an institutional position on political issues. This has also consistently been my own position.

(Initialed R.F.G.)
Robert F. Goheen

Princeton University

July 30, 1970

Statement of Policy and Guidelines Relating to the Tax-Exempt Status of the University and Political Activities

Princeton University has reviewed activities on its campus in order to make sure it fulfills its conception of its role as a seat of learning and free inquiry, as well as to insure that the tax exemption upon which it depends as a private educational institution not be endangered. The review has been made by the President and the Executive Committee of the Board of Trustees in consultation with the Executive Committee of the Council of the Princeton University Community and with the assistance of legal counsel. The review has had particular reference to the relevant provisions of the Internal Revenue Code as well as other statutes and to the guidelines recently issued by the American Council on Education as approved by the Commissioner of Internal Revenue.

A basic responsibility of the University is to protect its educational function and the resources accumulated over many years through the generosity of thousands of alumni and other friends of the University. Closely interrelated are maintenance of the legal status of the University as a tax-exempt institution and fidelity to the educational purposes for which it is chartered and for which it enjoys tax exemption.

No less fundamental is the opportunity for all members of the University community to exercise their prerogatives as citizens. While in some ways distinct, this concern also relates in important ways to the educational mission of the University. A basic principle of a residential university, such as Princeton, is that the education of the classroom is complemented and strengthened by the many opportunities for personal development and growth in a residential community. For this reason Princeton University has over many years provided facilities for, and encouragement to, members of the University community who wish to pursue varied talents and interests beyond the classroom. The result is a wide variety of existing campus organizations, including political organizations of various sorts, publications, pre-professional associations, musical and theatrical groups, inter-collegiate and intramural athletic teams, debating societies, and so on.

Encouragement of an interest in public affairs and the furthering of a sense of social responsibility have long been considered important elements of a liberal education. The University continues to consider self-chosen participation in political and social action by individuals and groups to be a valuable part of the educational experience it seeks to uphold. Such activities on the part of individuals or groups do not, and should not be taken to, imply commitment of the University to any partisan political position or point of view.

To serve these objectives the following guidelines have been developed, and are promulgated with the concurrence of the Executive Committee of the Council of the Princeton University Community and the endorsement of the Executive Committee of the Board of Trustees. The guidelines are believed to be consonant with the traditional role of the University and to be in keeping with New Jersey law governing the exempt status of University property and with the guidelines of the American Council on Education, which have been termed fair and reasonable by the Commissioner of Internal Revenue.

GUIDELINES

1. Members of the University community as individuals and groups have the right to exercise their full freedoms of expression and of association. The University, however, may not under federal law "participate in, or intervene in ... any political campaign on behalf of any candidate for public office", and "no substantial part" of the activities of the University may be directed to influencing legislation.* Individuals and groups within the University therefore must take special care to make it clear that when expressing political sentiments on such matters they are speaking only for themselves and not for the University.

*These limitations are contained in Section 501(c)(3) of the Internal Revenue Code. 18 U.S.C. 610 also forbids all corporations from making contributions or expenditures in connection with Presidential and Congressional campaigns.

2. Faculty, staff, and students have an obligation to fulfill all of their normal responsibilities in the University, and while they are free to engage in political activities, such activities must not be at the expense of their responsibilities in the University.

3. While the University's name has traditionally been used in a limited way for purposes of identification by persons connected with the University, it must not be used for partisan political purposes.

4. The Office of Physical Planning will, as in the past, assign space which is not required for other purposes to campus-based organizations, composed of members of the University community, which have submitted requests for space through the appropriate office (normally the Office of the Dean of Students). Organizations which include any significant number of persons from outside the University community may not be assigned space on campus.

5. In so far as they involve or employ people not members of the Princeton University community, campus-based organizations claiming national or regional status must base that portion, or all, of their activities off-campus. Such organizations must also obtain and use post office boxes or other off-campus mail addresses.

6. Campus-based organizations that participate or intervene in political campaigns or that attempt to influence legislation will be required to pay proper and appropriate charges for costs they impose on the University. This will involve normally payments for telephones, mimeographing, office space, and other operational costs.

7. No organization that participates or intervenes in campaigns on behalf of any candidate for public office or that is concerned with attempting to influence legislation or to advance causes not directly related to the mission of the University shall solicit funds for such purposes in the name of Princeton University. Campus-based organizations soliciting funds for political purposes must include in such solicitations a statement that contributions are not to Princeton University and are not tax deductible.

8. Any group wishing to use a University building for fund-raising purposes must obtain permission through the Office of the Secretary of the University. Generally, while the solicitation of voluntary donations is permissible, admission may not be charged. Unusual janitorial and related expenses shall be borne by the organizations concerned. Groups covered by paragraph 6 will, in addition, be required to pay a reasonable rental charge.

9. The University's Computer Center is intended to serve the educational, research, and administrative needs of the University. Thus, it is, of course, proper for the University Computer Center to be used for *bona fide* academic research, which may be conducted by students as well as by faculty and may include projects related to current political issues and to the positions taken by various candidates for public office. Time for research of this kind, so long as it is consistent with accepted academic canons, may be charged to regular departmental accounts. However, studies which in and of themselves might be *bona fide* academic research (such as roll-call analysis) may also be designed for direct partisan political pur-

poses. The University Computer Center will not accept work of this kind or any other work whose purpose is to engage in political activity or to advance other causes not directly related to the mission of the University, unless it can be performed in time not needed for primary University requirements and further provided that it is paid for from non-University funds at the regular rate plus the standard surcharge applicable to such work.

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General responsibility for the oversight and administration of these guidelines rests with the Office of the Director of Administrative and Personnel Services.

Campus-based organizations, no less than other organizations, should realize that they are subject to local, state, and federal laws and bear responsibility for compliance with them.

APPENDIX E
COLUMBIA UNIVERSITY STATEMENT OF POLICY AND REGULATIONS

TO THE UNIVERSITY COMMUNITY:

Following is a memorandum issued September 17 by President William McGill concerning the University and political activity. This memorandum is being made available to students, faculty, and staff to assure maximum opportunity for a complete understanding of the University's policy regarding political activity and the regulations that will be applied in the enforcement of this policy.

Office of Public Affairs
Columbia University
September 25, 1970

I. The University and Political Activity

Columbia University as a seat of learning and free inquiry has traditionally been a place in which divergent political views could be freely held and freely expressed by individuals and groups. Persons within the University have customarily been free to exercise their rights as citizens to be politically active, individually or in organizations. These honored rights are not in question. We all may take considerable pride in the fact that good judgment has generally shaped the actions of the members of Columbia University in pursuit of their many interests as citizens. Reciprocally, the University has long been dedicated to the proposition that the learning enterprise is best served by a conception of education broad enough to comprehend and even, in some instances, to make physical room for, activities that go well beyond those traditionally bounded by the classroom, the laboratory, and the research bureau. Consistent with this conception, the University continues to consider participation in political and social action by individuals and groups to be a valuable part of the educational experience it seeks to provide.

At the same time, the University as a corporation is steward of material resources for its educational function which it has been able to acquire through the generosity over long years of its alumni and friends and to attract in no small part because it is legally tax-exempt for its educational function. The University has an inescapable responsibility to protect those resources and the tax-exempt status by which society tangibly recognizes the value to all its citizens of the University's educational function and encourages the further growth of such resources.

Some recent and proposed political activities of Columbia students and faculty members present new situations in this context. Wide participation in the political campaigns for this autumn's Congressional elections makes it necessary to provide some guidance to members of the University about the lines of action that must be observed in order for the University to retain tax-exempt status under the United States Internal Revenue Code and comply with other applicable federal and state laws.

The American Council on Education has carefully investigated these problems, discussed them thoroughly with the Commissioner of Internal Revenue and his staff, and finally secured his approval of a set of general guidelines. A copy of

these guidelines is attached, supplementing an earlier distribution to deans, directors, and chairmen and to the Executive Committee of the University Senate.

The University administration has evaluated present and possible activities on the campus in the light of the problems to which the guidelines direct attention. The University's attorneys have advised that the University not only must stay within the guidelines if it is to retain its federal tax-exempt status and avoid possible criminal penalties, but also must observe particular precautions in order to maintain its exemption from local property taxation. The New York Real Property Tax Law requires the University's property to be used "exclusively" for its educational purposes in order to be exempt from local real property taxation. The use of University facilities for political campaigning purposes could mean the loss of the University's real property tax exemption for property so used, thus adding further burdens to an already overburdened budget.

Since the tax deductibility by a donor of his gift to Columbia depends upon whether Columbia is tax-exempt under federal law, it is obvious that Columbia, an institution that lives on gifts that are tax-deductible, is dependent on its tax-exempt status in order to continue its operations. If Columbia's federal tax exemption is even seriously questioned by the commissioner, gifts to Columbia will cease.

Under Section 501 (c) (3) of the Internal Revenue Code, there are two requirements for exempt status relevant here:

1) "no substantial part of the activities of" such an institution may be "carrying on propaganda, or otherwise attempting to influence legislation"; and

2) such an exempt organization may "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

The Federal Corrupt Practices Act makes it "unlawful" for "any corporation whatever . . . to make a contribution or expenditure in connection with any election" (including primaries, political conventions, etc.) for federal office. Columbia University is a corporation chartered by the New York legislature. The Corrupt Practices Act carries criminal penalties not only for a corporation which violates it, but also for officers of the corporation who consent to the violation and for any person who accepts or receives any such prohibited contribution. The courts have decided that free or only partly reimbursed use of facilities or personnel constitutes a contribution. Such contributions in a candidate's campaign constitute participation or intervention in that campaign.

There must be a clear separation between the tax-exempt educational work of Columbia University and any organized political campaign activities of the members of the Columbia University academic community. The trustees, in a recent communication to the University Senate, affirmed "that every individual member of the Columbia University academic community has the right, and indeed, the duty, as a private citizen, to express his views on various political issues, and to play a citizen's role in the election process." But this right does not extend to the use of tax-exempt funds of the University to support the expression of his political views or his participation as a citizen in the election process—either directly or indirectly by free or only partly reimbursed use of University facilities or personnel.

Charging fully for use of such services or facilities as can be made available will help to obviate the possibility of the University's making a contribution to a campaign in violation of both the Internal Revenue Code and the Corrupt Practices Act. However, if the University allowed its facilities and services to be availed of excessively by political candidates or by those campaigning for political candi-

dates, even though it charged for their use, it could be held to have "participated" or "intervened" in a political campaign within the meaning of the Internal Revenue Code as construed by the commissioner. In addition, it might be held to have used its real property for other than an exempt purpose under the Real Property Tax Law. These risks are real and cannot be ignored.

Although at this stage it is impossible to anticipate every situation which may arise, all members of the University community are expected, in the light of the considerations outlined above, to comply with the Statement of Columbia University Policies and Practices which follows and to seek clarifications should their application to a particular situation seem unclear. This statement constitutes our interpretation of the general guidelines issued by the American Council on Education as they apply to our own setting and in the light of other locally applicable as well as federal laws.

II. Statement of Columbia University Policies and Practices on Campus Political Activities

1) When endorsing or opposing a candidate for political office or taking a position on an issue for the purpose of assisting or opposing a candidate, individuals and groups within Columbia University should take special care to make it clear that they are speaking only for themselves and not for the University.

2) Faculty and staff may take part in partisan political activities freely on their own time, but they must not do so at the expense of their regular responsibilities to the University and its students.

3) Columbia University's name or insignia cannot be used on stationery or other documents intended for political purposes, including soliciting funds for political support or carrying on a political campaign.

4) Funds or other contributions may not be solicited in the name of Columbia University for political support or carrying on a political campaign. Campus-based organizations soliciting funds for political purposes must include in such solicitations a statement that contributions are not to Columbia University and are not tax-deductible.

5) The University's bulk-mailing privilege may not be extended for political purposes; nor will the University's mailing lists be made available for such purposes.

6) University addresses, including those of departmental offices or faculty or staff offices, should not be used as mailing addresses for political campaign purposes.

7) The eligibility of an organization for assignment of University space will be governed by both the composition of its membership and the nature of the activity to be conducted in that space. Columbia University-related organizations composed solely of members of the corporate University community may utilize available University space assigned to them, subject in some instances to rental charges where called for by University space rental regulations, to engage in political activities that are directed entirely within the University community. (For applicable University space rental regulations, see No. 11 below.) When such organizations engage also in political activities aimed off-campus toward support of legislation or support of, or opposition to, any candidate for public office, they may not utilize University space for these activities, but instead must conduct all such activities off-campus. University-related organizations which involve non-University members, participants, or employees and that engage in political activities directed toward support of legislation or support of, or opposition to, any

candidate for political office will be ineligible for assignments of University space and their campus representatives must obtain and use post office boxes or other off-campus mail addresses for such activities.

8) Campus-based organizations that participate or intervene in political campaigns of candidates or that attempt to influence legislation will be required to pay proper and appropriate charges for costs that such actions as are permissible on campus impose on the University. Typically, this will involve reimbursement for telephones, duplicating and other incidental costs. Of course, it will be necessary to terminate impermissible activities on campus and to require reimbursement for costs they impose on the University.

9) Staff, including office and other employees, may not—and should not be asked to—perform tasks related to partisan political activities while on duty at the University.

10) Campus-based organizations, no less than other organizations, should note that they are subject to local, state, and federal laws and bear responsibility for compliance with them.

11) **Space Rental Regulations:** Where proposed activities are permitted under the ACE guidelines and the implementing Statement of Columbia University Policies and Practices on Campus Political Activities, when space is available for assignment, the following space regulations will be applicable:

A) **Offices and Other Facilities Regularly Reserved for Student Use:** There will be no change in present methods of allocating space ordinarily reserved for student and other campus organizations. Space in Ferris Booth Hall, for example, will be allocated through the Board of Managers and the Columbia College Director of Student Activities, as in the past. However, any campus organization which "participates" or "intervenes" in a political campaign will be required to pay the full rental fee, even if the organization would otherwise be eligible for reduced rates or an exemption from the standard fees. Copies of the fee schedule for Wollman Auditorium and other meeting rooms in Ferris Booth Hall are available from the Office of Student Activities, 206 Ferris Booth Hall.

B) **Other Lecture Halls and Meeting Rooms:** Campus organizations wishing to use McMillin Theater, Harkness Theater, or other large lecture halls or classrooms will be charged for the use of those facilities, if the auditorium, lecture hall, or classroom is to be used in support of any political campaign. Rental charges will be based upon seating capacity (at 20 cents per seat for one day or any part thereof). On this basis, McMillin Theater will rent for $242.40 and Harkness Theater will rent for $58.80. Additional charges will be made if special services are required, including such items as loudspeaker systems and janitorial and guard services above those ordinarily provided. Requests for the use of any auditorium, lecture hall or classroom should be presented to the Office of the Registrar in sufficient detail and in ample time to permit the proposed use to be examined in light of the Guidelines and the Statement of Columbia University Policies and Practices on Campus Political Activities. All fees must be paid in advance. In no case will these facilities be made available in a manner which interferes with their scheduled use for regular University activities.

C) **Office Space Rental:** Office and other working space normally assigned to student and other campus organizations is extremely limited in supply but may be used, if available, for purposes permitted by University policies and the guidelines. Student organizations desiring such space should apply to the University director for student interests, who will determine whether they are eligible to be assigned space. If he determines that the applicant organization is eligible and if

the space in question is available, it may be assigned by him on a week-to-week basis. Other organizations should apply directly to the University coordinator (see below) for assignments of office or other working space. If the organization in either case desiring space has participated or intends to participate in any manner in a political campaign, rental charges will be imposed. The standard rental rates will be $4.50 per square foot per year or, on a weekly basis, 9 cents per square foot per week. Advance deposit of one week's rental will be required. The space so assigned may be repossessed by the University coordinator upon the expiration of one week of advance notice if it becomes needed for ordinary University functions, or the occupant is delinquent in payment of rent, or repossessed immediately for failure to comply with any of the conditions set forth in this Statement of Policies and Practices or such amendments as may be subsequently issued to assure protection of the University's tax-exempt status.

D) **Equipment:** Campus representatives of organizations actively engaged off-campus in support of any political candidate should arrange for the installation of their own telephones and for rental outside the University of office equipment, and for the purchase of office supplies to be used in connection with such political activity. Approval for telephone installations in University buildings must be obtained from the University Purchasing Department; such telephones must not be on the University Centrex system but on a different exchange. In no such case should services, equipment, or supplies be purchased or rented in the name of the University.

12) **University Coordinator:** I have appointed John A. Bornemann [special assistant to the president] to act as University coordinator to deal with the matters covered in this memorandum as my personal representative. He will report directly to me.

William J. McGill, President, September 17, 1970.

APPENDIX F
CASES BROUGHT UNDER THE FEDERAL CORRUPT PRACTICES ACT SINCE MAY 1968

Case	Location	Instrument	Pleading	Fine
Pipefitters Local Union #562	St. Louis, Mo.	Indictment 5/9/68 Under 18 U.S.C. 371	Guilty Verdict by Jury Trial; Affirmed by 8th Circuit 6/9/70*	$ 8,000.00 1 Year in Prison per Officer
National Brewing Company	Baltimore, Md.	Indictment 5/27/69	Guilty Plea 6/17/69	$ 7,500.00
Rossmoor Corporation	Los Angeles, Cal.	Indictment 6/12/69	Guilty Plea	$ 3,500.00
M. A. Nishkian and Company	Los Angeles, Cal.	Indictment 6/12/69	Guilty Plea 7/29/69	$ 2,500.00
Clougherty Packing Company, Bernard J. Clougherty	Los Angeles, Cal.	Indictment 8/13/69	Guilty Plea	$ 6,000.00
Max Sobel Wholesale Liquors, Inc.	San Francisco, Cal.	Indictment 9/18/69	Nolo Contendere 11/10/69	$10,000.00
Home Savings and Loan Association	Los Angeles, Cal.	Indictment 10/16/69	Guilty Plea 10/27/69	$15,000.00
Continental Savings and Loan	Los Angeles, Cal.	Indictment 10/16/69	Guilty Plea 10/27/69	$ 2,500.00
Arrowhead Savings and Loan Association	Los Angeles, Cal.	Indictment 10/16/69	Guilty Plea 10/27/69	$ 2,500.00
Galaxy, Inc.	Los Angeles, Cal.	Indictment 10/16/69	Guilty Plea 10/27/69	$20,000.00
Fluor Corporation	Los Angeles, Cal.	Indictment 10/20/69	Guilty Plea 11/3/69	$10,000.00
Pine Telephone Company	Muskogee, Okla.	Information 10/25/69	Not Guilty	Acquitted 2/5/70
International Latex Corporation	Wilmington, Del.	Information 12/2/69	Nolo Contendere 1/2/70	$ 5,000.00
American President Lines, Inc.	San Francisco, Cal.	Indictment 1/28/70	Guilty Plea 2/6/70	$50,000.00
Pacific Far East Lines, Inc.	San Francisco, Cal.	Indictment 1/28/70	Guilty Plea 2/6/70	$50,000.00
Guaranty Bank & Trust Co.	Alexandria, La.	Information 5/20/70	Guilty Plea 5/20/70	$15,000.00
Seafarers International Union	Brooklyn, N.Y.	Indictment 6/30/70		
First Western State Bank	Minot, N. Dak.	Indictment 7/31/70		

*Opinion vacated and case to be reargued *en banc*.

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